

April 7, 2006

Subject: Request for Proposals No. 6M2006
On-Call Financial Advisory Services

To All Interested Parties:

The San Francisco Bay Area Rapid Transit District (hereinafter referred to as "District" or "BART") is requesting proposals to provide on-call financial advisory services for a three-year period. The Scope of Services and requirements are contained in the attached Request for Proposal (RFP). Expenditures for financial advisory services for this three-year period are not expected to exceed \$375,000.

Proposals must be received by 2:00 PM, local time, Tuesday, April 25, 2006 at the address listed in the RFP. Submission of a proposal shall constitute a firm offer to the District for one hundred and eighty (180) calendar days from date of proposal submission.

Please direct all questions concerning the technical aspects of this RFP to Mr. Scott Schroeder, Controller/Treasurer (phone: 510-464-6070) and all questions concerning DBE participation to Mr. Don Demer, (phone: 510-464-6884). All other questions concerning this RFP should be directed to Mr. Andrew Mitchelson, Contract Administrator (phone: 510-287-4733).

Thank you for your interest in the District's procurements.

Sincerely,

Andrew Mitchelson
Contract Administrator

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

REQUEST FOR PROPOSALS

FOR

ON-CALL FINANCIAL ADVISORY SERVICES

BART RFP NO. 6M2006

2006

Proposal Submission Date:
2:00 PM, Local Time
April 25, 2006

ISSUE DATE:
April 7, 2006

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EXHIBITS

EXHIBITS FOR ALL CONSULTING SERVICES RFPS:

EXHIBIT 1: AGREEMENT FOR CONSULTING SERVICES

ATTACHMENT A: SCOPE OF SERVICES

ATTACHMENT B: KEY PERSONNEL LIST

ATTACHMENT C NOT USED

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ATTACHMENT G: U.S. DEPARTMENT OF TRANSPORTATION (DOT) FEDERAL TRANSIT
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EXHIBIT 2 NOT USED

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EXHIBIT 4: STATEMENT OF BUSINESS AND FINANCIAL QUALIFICATIONS

EXHIBIT 5: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

EXHIBIT 6: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

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REQUEST FOR PROPOSALS
TO PROVIDE
FINANCIAL ADVISORY SERVICES

I. INTRODUCTION

A. BART and CONSULTANT

The San Francisco Bay Area Rapid Transit District ("BART" or "District") intends to engage the services of a consulting firm or joint venture ("CONSULTANT") to provide on-call Financial Advisory Services.

B. Requesting Proposals

Accordingly, BART is now accepting proposals from proposers ("Proposers") for consideration for the selection of a CONSULTANT to perform the scope of services specified in this Request for Proposals ("RFP").

1. The Services may not be required on a constant or continuous basis, but rather could be on an as-needed, on-call basis during the term of the agreement entered into pursuant to the terms of this RFP ("Agreement").
2. During the term of the Agreement assignments will be made to the CONSULTANT via Task Order(s) ("TO(s)").
3. The administrative procedures for issuing TOs are set forth in Article 1.2, SCOPE OF SERVICES, of the Agreement attached as Exhibit 1 to this RFP. The procedures include the following requirements:
 - a. Upon receipt of a Task Order Proposal Request ("TOPR"), the CONSULTANT will immediately prepare a Task Order Proposal ("TOP"). The TOP will contain a detailed work plan, cost estimate and schedule for BART's written approval prior to the CONSULTANT's implementing the TO.
 - b. BART reserves the right to terminate a TO and redirect the remainder of the work to another CONSULTANT.
 - c. If a TOP is rejected, neither party shall have any rights or obligations arising out of the TOP or TOPR.
 - d. Compensation for the costs of TOP preparation, or costs incurred as result of an accepted TOP, are addressed in Section IV, below, of this RFP.

C. Entering into an Agreement

Based upon Section VII, AGREEMENT, below, the CONSULTANT selected will be required to enter into the Agreement with BART.

D. Funding Sources

A variety of funding may be used to fund TOs, including federal and local sources. The Agreement entered into as a result of this RFP may be funded, in part or in full, under a grant from (a) the United States Department of Transportation ("DOT"), Federal Transit Administration ("FTA"). Contractual provisions required by these Federal and other agencies are set forth in Exhibit 1, Attachments G.

E. RFP Proposal Costs

This RFP does not commit BART to enter into an agreement, to pay any costs incurred in the preparation or presentation of a proposal, or to procure or contract for services.

1. BART reserves, at its sole discretion, the right to reject any and all proposals solicited by this RFP and to waive informalities and minor irregularities in any proposals received.
2. BART also reserves, at its sole discretion, the right to negotiate with all qualified Proposers, or to cancel this RFP in whole or in part.
3. BART may require selected Proposers to participate in negotiations and to submit such cost or technical data or other revisions of its proposals as may result from such negotiations.
4. BART may request Proposer(s) to extend the validity period of its proposal beyond the requirements set forth in Section IX, PROPOSAL SUBMISSION, subsection B.3. by written agreement between BART and the Proposer(s) concerned.

F. California Public Records Act

This RFP and any material submitted by the Proposer are subject to public inspection under the California Public Records Act (California Government Code Section 6250 et seq.), unless exempted by law.

G. Award from RFP

The District intends to make one award resulting from this RFP. To avoid the potential for a conflict of interest, the successful prime awardee will be precluded, and major subconsultants may be precluded, from performing services in connection with other related procurements. In addition, the successful awardee may not be allowed to perform finance services for projects in which the awardee provided financial advisory services.

II. SCOPE OF SERVICES

A. Services to be Provided

Services to be provided are described in Attachment A, SCOPE OF SERVICES, to Exhibit 1, AGREEMENT FOR CONSULTING SERVICES, of this RFP. Among other things CONSULTANT's services are expected to conform to the following guidelines:

1. Services for any work which may be authorized pursuant to this RFP shall be performed in accordance with the terms of Exhibit 1, Attachment A, SCOPE OF SERVICES. Such services must comply with applicable Federal, state, county, city and District guidelines, policies, and procedures. Consulting services to be provided by the CONSULTANT under the Agreement shall comply with the latest specified edition of all applicable codes, ordinances, standards, regulations and other laws unless otherwise specified by BART.
2. In addition, CONSULTANT may be required, in the performance of its services, to comply with the requirements of various agencies, including counties, cities, and railroads. BART, to the extent possible, will provide all relevant information in its possession at the time an TOPR is issued.
3. To the extent possible, work is to be provided by personnel of CONSULTANT located in the San Francisco Bay Area. BART may provide office space for CONSULTANT'S personnel (working under the Agreement) as provided for in the TOs under the Agreement. In these cases, an appropriate field overhead rate is anticipated to be utilized. Subsistence

expenses and travel expenses will be compensated only if expressly approved by the District.

4. CONSULTANT will provide services on a fixed price basis, a cost reimbursable plus fixed fee basis, or a combination thereof, at BART's sole discretion.
5. CONSULTANT shall furnish all management, technical and administrative personnel required. All services furnished shall include use of any appropriate subconsultants as may be needed.

B. Agreement not Exclusive

BART's Agreement with CONSULTANT will not be exclusive. Therefore, any specific activity may be provided as a part of an TO to CONSULTANT or separately procured.

III. ESTIMATED COST

It is anticipated that the total cost for the Agreement shall not exceed the amount \$375,000. However, there is no guaranteed minimum level of compensation.

IV. COMPENSATION

The administrative procedures for compensation and method of payment are set forth in Exhibit 1, AGREEMENT FOR CONSULTING SERVICES (Article 3.0, COMPENSATION AND METHOD OF PAYMENT).

V. CONFLICT OF INTEREST AND FINANCIAL CONTRIBUTION LIMITATION

A. Conflict Of Interest

1. Depending upon the nature of the services performed, District consultants are subject to the same conflict of interest prohibitions which apply to District employees. These include, but are not limited to, the conflict prohibitions of the Federal Transit Administration (FTA) (see FTA's Circular 4220.1E, "Third Party Contracting Requirements") and the requirements of California law (including Government Code Sections 1090 et seq. and 87100 et seq., and Title 2, Division 6 of the California Code of Regulations.) Notwithstanding subsection 2 below, the District reserves the right to disqualify any Proposer under this RFP if the District, in its sole discretion, deems that the potential for conflicts of interest is likely to impair or restrict the Proposer's ability to furnish services contemplated within the Scope of Services.
2. Proposers should be aware that in order to avoid any potential conflicts of interest, a successful Proposer and its affiliates may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services pursuant to this RFP. Specifically, and without limitation, an awardee of this RFP may be precluded from performance as a subconsultant on any other Agreement which may be awarded under this RFP and from financial services for any projects in which awardee provided financial advisory services.
3. As part of the RFP process, Proposers are required to disclose all work performed by the Proposer (or any of its affiliates) within five (5) years of the date of receipt of proposals for this RFP which is related to a BART project. Additionally, Proposers may be required to disclose financial interests so that the District may be assured that the potential for conflicts of interest under state or federal law and regulations is not likely to impair the Proposer's ability to furnish services contemplated within the Scope of Services.

B. Financial Contribution Limitation

1. The District adopted a Board rule limiting financial contributions to Board members and candidates for Director (Resolution 4681, hereinafter referred to as "the rule"). In regard to any agreement award requiring authorization of the Board, the rule prohibits all proposers and any proposed first tier subcontractor whose subcontract exceeds \$100,000 from making any monetary or in-kind contribution (including loans) to a BART Director or to any candidate for Director. For purposes of the rule, the term "contribution" shall have the same meaning as defined in California Government Code Section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
2. The rule shall be effective from the date proposals are opened by the District and continue until the award of the Agreement. The rule will continue to apply in regard to the successful Proposer awarded the Agreement, and each first tier subcontractor whose subcontract exceeds \$100,000, for three (3) months following award. Proposers shall require each proposed subcontractor whose subcontract exceeds \$100,000 to comply with the rule.
3. Attention is directed to Exhibit 8, CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS of this RFP. Proposer, and each proposed first tier subcontractor whose subcontract exceeds \$100,000, shall be required to execute this Certification. Proposer must use its best efforts to collect the Certification from each first tier subcontractor whose subcontract exceeds \$100,000 and to submit such Certifications along with its own to the District on the date proposals are due. Proposer is advised that all Certifications must be submitted on the date proposals are due unless there is reasonable cause for delay; however, Proposer is cautioned that unless all Certifications are submitted within five (5) calendar days after the date proposals are due, the proposal may be considered non-responsive.
4. Certifications submitted after the proposal due date shall be submitted to:

San Francisco Bay Area Rapid Transit District
Contract Administration Division
300 Lakeside Drive, 17th Floor
Oakland, CA 94612
Attn: Andrew Mitchelson, Fax No.: 510-464-7650
5. Fax transmission of the Certifications will be acceptable by the above deadlines subject to subsequent receipt of originals by express or U.S. mail. Please direct any questions regarding the rule to the above.

VI. TERM OF AGREEMENT

The term of the Agreement entered into pursuant to this RFP will be for three (3) years, subject to termination as provided for in the Agreement.

VII. AGREEMENT

A. Exhibit No. 1

The Agreement for consulting services to be signed by CONSULTANT is included as Exhibit 1, AGREEMENT FOR CONSULTING SERVICES, of this RFP. Exhibit 1 is a sample document and shall not be filled-in, executed or submitted with proposals.

B. Article 6.0, Insurance

Proposer's attention is directed to Article 6.0, INSURANCE, of Exhibit 1 which sets forth the insurance requirements which the selected CONSULTANT shall comply with during the duration of the Agreement.

1. Insurance coverage shall be maintained throughout the term of the Agreement.
2. The successful Proposer must be prepared to submit a valid certificate of insurance which meets the requirements of Article 6.0 of Exhibit 1 for approval by BART prior to proceeding with the services.

C. Agreement Acceptance and Proposed Changes

1. In order to meet BART's schedule requirements, it is critical that the Agreement be executed immediately following selection of a Proposer as CONSULTANT. Proposer shall be prepared to accept the terms and conditions of the Agreement.
2. If a Proposer desires to propose any changes in the Agreement, the Proposer must clearly identify each and every proposed change, the reasons therefor and the specific alternative language proposed, in the proposal submitted in response to this RFP. These factors will be taken into account during BART's evaluation of proposals and/or during negotiations of fair and reasonable compensation. The District may develop price-related factors to be applied to any exceptions taken. Proposals which take substantial exceptions to the Agreement or proposed compensation terms may be determined by BART, in its sole discretion, to be unacceptable and no longer considered for award (see Section IX.A.5. below).

VIII. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The District is committed to carrying out all of the Disadvantaged Business Enterprise ("DBE") requirements of Title 49, Code of Federal Regulations, Part 26, effective March 4, 1999, as amended from time to time. The procedures contained in the BART DBE Program will assure that all contracts and procurements are administered without discrimination on the basis of race, color, sex, or national origin, and that DBEs have an equal opportunity to compete for and participate in the performance of all agreements, contracts and subcontracts awarded by the District.

A. BART Policy

It is the policy of BART to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of DOT-assisted contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for agreements, contracts and subcontracts, including but not limited to construction, procurement and proposal contracts, consulting and technical services agreements and purchase orders.

B. Joint Venture with DBE

Proposers are also encouraged to explore joint venturing possibilities with DBEs for the work to be performed. **A DBE may only be a participant on one proposing team.** Proposers are also encouraged to explore joint venturing possibilities with DBEs for the work to be performed. A DBE may only participate with a single proposer. See Exhibit 5, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION, to this RFP for DBE participation requirements.

C. Participation Goal

The DBE participation goal for this proposal is established at **20%**.

IX. PROPOSAL SUBMISSION

A. Proposal Requirements

Proposals shall include but not necessarily be limited to the following:

1. A brief description of your organization including a list of principals and contact person for the project and the availability of personnel.
2. Your experience in conducting financial advisory services for various projects describing scope, size and nature of project. Include a list of recently completed projects; indicate contact name and telephone number.
3. Resumes of proposed project personnel with a listing of previous consulting experience, specifically related to innovative financial planning, references, including name, address, telephone number of contact(s), approximate value of contract(s) and current status to be submitted as part of Exhibit 4, Statement of Business and Financial Qualifications.
4. A detailed description of the process by which Task Order budgets and schedules are controlled to deliver services and products in a timely fashion and within budget.
5. A description of the process by which the proposer performs cost or price analysis of subcontractor data which will be incorporated into Task Order Proposals submitted to BART.
6. Information on all other selection criteria listed in IX.B.
7. A list of at least five (5) references from at least five (5) projects completed within the past year to be submitted as part of Exhibit 4, Statement of Business and Financial Qualifications.
8. A Rate Schedule Form. (See Exhibit 12)
9. A completed Statement of Qualifications and Business References (Exhibit 4) A separate form for any joint venture shall be included.
10. Other Required Proposal Submittals:
 - a. Exhibit 5, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION – Proposals shall include information regarding DBE Participation required by Exhibit 5 to this RFP, including completion of the DBE Information Form. Proposer shall also obtain written commitments from the listed DBEs for the work or services in the amounts specified in Exhibit 9 prior to submission of the proposal.
 - b. Exhibit 6, CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION, LOWER TIER COVERED TRANSACTIONS – All Proposers and identified subconsultants receiving an amount in excess of \$100,000, shall execute the Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions, contained in Exhibit 6 to this RFP and include it with the proposal (see Section G7, Debarment and Suspension, of Attachment G to Exhibit 1 of this RFP). Proposers are advised that if such Certifications are not included with the proposal, failure to submit such Certifications thereafter, within a reasonable time limit as established by BART, may prevent award to the Proposer. Following award, the Certification of all other proposed subconsultants or subcontractors of any tier receiving an amount in excess of \$100,000 shall be submitted by the Proposer to the Project Director identified in the

Agreement at least 14 calendar days before the commencement of each subconsultant's work.

c. Exhibit 7, CERTIFICATION REGARDING LOBBYING – All Proposers and identified subconsultants receiving an amount in excess of \$100,000 shall execute the Certification Regarding Lobbying in Exhibit 7 to this RFP and the Proposer shall include such with the proposal (see Section G9, Certification Regarding Lobbying, of Attachment G to Exhibit 1 of this RFP). Proposers are advised that if such Certifications are not included with the proposal, failure to submit such Certifications thereafter, within a reasonable time limit as established by BART, may prevent award to the Proposer. Following award, the Certification of all other proposed subconsultants or subcontractors of any tier receiving an amount in excess of \$100,000 shall be submitted by the Consultant to the Project Director identified in Consultant's agreement with BART at least 14 calendar days before the commencement of each subconsultant's work.

d. Exhibit 8, CERTIFICATION REGARDING FINANCIAL CONTRIBUTIONS – All Proposers and identified subconsultants over \$100,000 shall execute the certification in Exhibit 8 to this RFP and include it with the proposal.

e. Exhibit 9, PROJECT CONSULTANT TEAM – Proposers shall provide information concerning the Project Consultant Team, including DBE participation, by completing and executing Exhibit 9 this RFP. Proposer is reminded that it is the District's goal to encourage Disadvantaged Business Enterprise participation related to its work. Accordingly, Proposers are encouraged to develop multiple subconsultants in areas of work concentration to diversify firms participating under the Agreement.

B. Proposal Format and Execution:

1. Proposals shall be typewritten on paper 8½" x 11" in size. Any larger sheets included must be folded to that size. Pages shall be consecutively numbered. The proposal shall be clearly labeled: "Proposal No. 6M2006, On-Call Financial Advisory Services".
2. Proposals shall include firm name (and in the event the Proposer is a joint venture, the names of the individual firms comprising the joint venture), business address, and the name, title and business address of the responsible individual, with their telephone and telecopier numbers, who may be contacted during the proposal evaluation period.
3. Proposals shall be signed by an official authorized to bind the Proposer and shall constitute a firm offer for at least one hundred eighty (180) calendar days from the last date of receipt of proposals set forth herein. If necessary, the period of time specified may be extended by written agreement between the District, by and through its Controller/Treasurer or authorized representative and the Proposer(s) concerned.

C. Proposals must be received by BART by 2:00 p.m. local time on, **April 25, 2006**.

1. Proposals shall be submitted to either of the following addresses:

By personal delivery or express mail:
District Secretary

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 23rd Floor
Oakland, California 94612

or

By U.S. mail:
District Secretary
San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, California 94604-2688

2. Envelopes containing proposals shall be clearly labeled "Request for Proposal No. 6M2006, On-Call Financial Advisory Services".
3. At least eight (8) copies of each proposal and appendices shall be furnished. One of the eight copies shall be clearly marked "ORIGINAL". Another one of the eight copies shall be furnished, identical to the others with the exception that no Statement of Qualifications and Business References shall be included. This copy shall be marked "PUBLIC RECORD COPY".
4. **Pricing information, including Exhibit 12 and additional billing rates, shall be included in a separate sealed envelope marked "Price Proposal".**

D. This RFP does not commit BART to award an agreement, to pay any costs incurred in the preparation or presentation of a proposal, or to procure or contract for services.

1. BART reserves, at its sole discretion, the right to reject any and all proposals and to waive informalities and irregularities in proposals received. BART also reserves, at its sole discretion, the right to negotiate with all qualified sources, or to cancel in part or in its entirety, this RFP.
2. BART may require selected Proposers to participate in negotiations and to submit such cost or technical data or other revisions of its Proposals as may result from the negotiations.

E. Questions Regarding the RFP

Questions concerning this RFP shall be directed to the District's Contract Administrator. Questions regarding DBE participation shall be directed to the District's Senior Civil Rights Officer. All inquiries shall be made to the District at least ten (10) calendar days before the proposal submission date. Inquiries received less than ten (10) calendar days prior to such date may, at the District's sole option, not be responded to.

Contract Administrator

Andrew Mitchelson
BART's Procurement Department
300 Lakeside Drive, 17th floor
Oakland, CA 94612
Phone: 510-287-4733
FAX: 510-464-7650

Senior Civil Rights Officer

Don Demer
BART's Office of Civil Rights
300 Lakeside Drive, 18th floor
Oakland, CA 94612
Phone: 510-464-6884
FAX: 510-464-7587

F. Rejection of Proposals

Proposals may be rejected if they show such items as: alteration of form; additions not called for; conditional proposals; incomplete proposals; irregularities which make the proposal incomplete, indefinite or ambiguous; improper markings and identification; or a signature by other than an authorized person.

X. CONSULTANT SELECTION

A. General

1. In this RFP, source selection will be based on both a Proposer's qualifications and structure. The District will first evaluate whether a proposal is responsive to the requirements of the RFP and whether the Proposer's organization is considered responsible.
2. Thereafter, proposals will be evaluated on the basis of qualifications.
3. After all qualified Proposers have been identified (by the evaluation procedure described below) the competitive range will be established and used to determine those Proposers who will then proceed to the oral interview stage.
4. After oral interviews are held the Selection Committee will do a "Best Value Analysis" (detailed below) to determine which Proposer offers the best value to the District. Final award will be based upon this analysis.

B. Evaluation Procedures

1. Proposals will be evaluated by a Selection Committee composed of District staff.
2. Proposals will be first evaluated as to responsiveness to the requirements of the RFP and responsibility of the Proposer.
 - a. A proposal will be considered responsive only if it complies in all material respects to the requirements of the RFP. If the District is not able to confirm the veracity of all qualification data or other information provided in the proposal, the District reserves the right to request further qualification data or other information or to determine the proposal to be not acceptable. These findings will be given to the Selection Committee, and such findings shall be finalized at the time of award.
 - b. A Proposer's organization will be considered responsible only if it has, or has indicated that it can obtain, the financial resources to fulfill successfully, the requirements of an awarded Agreement, and possesses the ability to perform successfully under the terms of an awarded Agreement.
 - c. If a proposal is determined to be non-responsive, or a Proposer's organization is determined to be not responsible for the purposes of the RFP, such proposal or Proposer will not be considered for award.
3. The Selection Committee will review the proposals to determine which meet the District's requirements (as set forth in the RFP) or could, after clarification or discussions, be made to meet such requirements, on the basis of the evaluation criteria set forth in subsection C. below.

- a. "Clarification" meetings and communications:
 - (1) BART reserves the right to communicate with any Proposer for the sole purpose of eliminating minor irregularities, informalities, or apparent clerical mistakes, in a proposal or statement of qualifications. In lieu of or in addition to meetings, BART may seek, by telephone, facsimile (FAX) or any other means of communication, written clarifications from the Proposer. Such clarification shall be completed before making an evaluation of a proposal or statement of qualifications. For the purpose of this RFP, any meetings(s) or communication(s) for the purpose of clarification shall not be considered an oral presentation by the Proposer as described in subsection B.6 below.
 - (2) Any written communication from a Proposer (other than a point of clarification expressly requested by BART) that is, or in BART's sole judgment appears to be, a modification to a proposal or statement of qualifications will not be considered for evaluation purposes and will be returned to the Proposer.
 - b. The Selection Committee will make a written determination with respect to each proposal as to whether or not it has met all the District's requirements.
 - c. BART reserves the right to enter into discussions with any Proposer for the purpose of resolving any and all exceptions listed in the proposal. If the parties do not reach agreement on all exceptions listed in the proposal then the proposal may be deemed unacceptable and be disqualified from any further consideration.
4. Following the determination of which proposals have met the District's requirements the Selection Committee will evaluate the information as requested in subsection IX.A from such Proposers with respect to qualifications of the firm or organization, qualifications of key personnel and project approach and management on the basis of evaluation criteria set forth in subsection C. below.
 5. The Selection Committee will then determine which proposals fall within the competitive range on the basis of the factors stated herein. When there is a doubt whether a proposal is in the competitive range, the proposal will be included.
 6. BART will contact those Proposers within the competitive range to schedule oral presentations before the Selection Committee or a separate Interview Committee as BART, at its sole discretion, deems appropriate.

This Selection Committee shall require only a majority of its members present to conduct its business or have oral presentations.

- a. Details regarding the length of the oral presentation, the size of Proposer's presentation team and the extent and length of BART's questions and answer period will be communicated in writing to the selected Proposers.
7. BART reserves the right, at its sole discretion, to:
 - a. Continue the oral presentations with all of the Proposers or with a reduced number of Proposers.
 - b. Alter the meeting format as to presentation, questions and Proposer team attendance.
 8. After oral interviews have been completed and evaluated, a final ranking score based on written and oral evaluations will be determined.

For purposes of the final overall ranking, written statements of qualification and oral interviews will be weighted as follows:

*	Written statement of qualifications	50.0%
*	Oral Interview	50.0%
		<u>100.0%</u>

9. "Best Value" Phase

Thereafter a "Best Value" analysis will be conducted by the Selection Committee, taking into account the rate schedule and the final overall scores. The Selection Committee's recommendation for award will be for that proposal which offers the best overall value to the District. In making this comparison the District is concerned with striking the most advantageous balance between technical qualifications/oral presentation, price structure features and overall need of the District.

C. Evaluation Criteria

The District will evaluate each proposal in accordance with a qualitative evaluation procedure and rating guidelines based on the criteria described below and the proposal requirements described in Section IX.

Factors to be considered in selecting the CONSULTANT will include but not be limited to the following:

- a. The Proposer's general understanding of BART's financial objectives and perspectives.
- b. The Proposer shall maintain a full service office within the nine county Bay Area.
- c. The experience and quality of performance of the proposer's organization(s) in providing financial advisory services for transit systems and public agencies.
- d. The experience and quality of the proposer's personnel in providing professional, technical and managerial expertise and related services for transit systems and relevant projects.
- e. Management approach as reflected by proposer's project organization, and technical approach to implement the scope of services in Exhibit 1, Attachment A.
- f. Proposer's ability to perform Scope of Services (Exhibit 1, Attachment A.)

D. Proposal Evaluation and Recommendation for Award

The Selection Committee shall transmit its final ranking to the Department Manager, Procurement, for management approval. When management approval of the final ranking has been received, a recommendation for selection will be made to the District's Controller/Treasurer, or his or her designee concerning the selection of a Proposer or Proposers for award of an Agreement or Agreements under this RFP. The Controller/Treasurer shall review the recommendations and make a recommended award. The authority of the Controller/Treasurer to enter into an Agreement with the selected Proposer or Proposers is subject to approval by BART's Board of Directors.

XI. PROTEST PROCEDURE

A. Submittal of Protests

All protests must be in writing, stating the name and address of the protestor, a contact person, the RFP/Agreement Number and Title and shall specify in detail the grounds of the protest and the facts supporting the protest.

All protests must be addressed as follows:

For Special Delivery or Hand Delivery:
District Secretary

or **By U.S. Mail:**

District Secretary
San Francisco Bay Area Rapid Transit District

San Francisco Bay Area Rapid Transit District

300 Lakeside Drive, 23rd Floor

Oakland, CA 94612

P.O. Box 12688

Oakland, CA 94604-2688

Protests not properly addressed to the District Secretary may not be considered by the District.

Copies of the District's Protest Procedures and the protest provisions of FTA Circular 4220.1E may be obtained from the District's Division of Contract Administration, P. O. Box 12688, Oakland, California 94604-2688, Telephone (510) 464-6540. Proposals will be opened and a Notice of Award will be issued by the District only in accordance with the District's Protest Procedures and the protest provisions of FTA Circular 4220.1E.

B. Pre-proposal Protests

Pre-proposal protests are protests based upon the content of the solicitation documents.

Five (5) copies of pre-proposal protests must be received by the District Secretary no later than ten (10) calendar days prior to proposal opening. A written decision specifying the grounds for sustaining all or part of, or denying, the protest will be transmitted to the protestor in a manner that will provide verification of receipt, prior to the submission of proposals. If the protest is sustained, the proposal submission date may be postponed and an addendum issued to the RFP document or, at the sole discretion of the District, the advertisement may be canceled. If the protest is denied, proposals will be received on the scheduled date.

C. Protests on the Recommended Award

All Proposers will be notified of the recommended award, if any. This notice will be transmitted to the Proposer at the address contained in its proposal in a manner that provides verification of receipt. Any Proposer whose proposal has not lapsed may protest the recommended award on any ground not specified in subsection B. above. Ten (10) copies of a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest must be received by the District Secretary at the appropriate address set forth in subsection A. above no later than seven (7) calendar days following receipt of such notification. A written decision stating the grounds for allowing or denying the protest will be transmitted to the protestor and the Proposer recommended for award in a manner that provides verification of receipt, prior to execution of the Agreement. Such decision shall be final.

D. FTA Review

A Proposer or prospective Proposer that submits a protest may request FTA review of District action on a protest subject to the following requirements: FTA review is limited to the alleged failure of the District to have written protest procedures, the alleged failure of the District to follow those procedures, or the alleged failure of the District to review a protest; a protest to FTA must be filed with FTA's Regional Administrator for Region IX in San Francisco, within five (5) working days after the District's decision becomes final or five (5) working days after a Proposer or prospective Proposer knows, or should have known, that the District has failed to

render a final decision; a copy of the protest filed with the FTA shall be submitted to the District Secretary.

EXHIBIT 1

AGREEMENT FOR CONSULTING SERVICES

AGREEMENT

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

TO PROVIDE

ON-CALL FINANCIAL ADVISORY SERVICES

FOR

BART AGREEMENT NO. 6M2006

2006

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Attachments

ATTACHMENT A: SCOPE OF SERVICES

ATTACHMENT B: KEY PERSONNEL LIST

ATTACHMENT C: NOT USED

ATTACHMENT D: PROJECT CONSULTANT TEAM

ATTACHMENT E: NOT USED

ATTACHMENT F: DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

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CONSULTING SERVICES

AGREEMENT NO. 6M2006

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

THIS AGREEMENT ("Agreement"), made and entered into this ____ day of _____, 20__, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART" or the "District"), a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq., and _____ ("CONSULTANT"), with offices at _____.

R E C I T A L S

This Agreement is made with reference to the following facts:

1. BART proposes to obtain Financial Advisory Services for the District;
2. BART has applied for or received grants from the United States Department of Transportation, Federal Transit Administration and other Federal agencies to assist in financing portions of the Project;
3. Some of the services required for the Project cannot be performed satisfactorily by the officers and employees of BART; and,
4. The parties hereto now wish to enter into this Agreement pursuant to which CONSULTANT will furnish consulting services in connection with the Project as hereinafter provided.

* * *

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 WORK TO BE PERFORMED

The parties agree that the work to be performed by the CONSULTANT under this Agreement shall be as hereinafter set forth in this Article 1.0;

1.1 SCOPE OF SERVICES

CONSULTANT's services are described in Attachment A, SCOPE OF SERVICES, incorporated herein and by this reference made a part hereof. CONSULTANT shall be responsible to perform or secure the performance of all requested services in their entirety subject to the prior written approval of work plan(s) ["Task Order(s)" or "TO(s)"] by (Name) (Job Title), or a designated representative ("Project Director"). The Project Director may designate a different representative for each TO.

The Project Director shall monitor CONSULTANT's performance with respect to compliance with the requirements of this Agreement.

This Agreement is not exclusive. BART expressly reserves the right to contract for performance of additional services such as those described herein through other consultants.

1.2 TASK ORDERS

CONSULTANT shall provide services to BART for the Projects as described in each TO subject to prior approval in accordance with the following procedures.

A. Task Order Proposal Request

BART will initiate a TO by transmitting to the CONSULTANT a Task Order Proposal Request ("TOPR") that describes an initial task description and implementation schedule. The TOPR will specify whether the requested services shall be compensated on a cost reimbursable plus fixed fee basis, a fixed price basis, or a combination thereof.

B. Task Order Proposal

CONSULTANT will then prepare a detailed Task Order Proposal ("TOP") and transmit it to BART within the time specified in the TOPR. The TOP shall specify the following:

1. Services to be performed by the CONSULTANT (see Article 1.1 above and Attachment A);
2. Management Plan that includes a list of key personnel (see Article 1.5 below);
3. Budget Plan including a detailed cost estimate and a cost-loaded schedule;
4. Work Breakdown Structure;
5. Schedule;
6. List of subconsultants, their scope of work and estimated value of work;

7. DBE participation (see generally Article 21.0, DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION, below);
8. Work products (see Article 1.1 above and Attachment A); and
9. TO project specific procedures (see Article 1.4, below).

C. TOP Evaluation

BART will evaluate the TOP. In its discretion, BART may request CONSULTANT to revise and resubmit the TOP.

D. Acceptance of TOP

BART will notify CONSULTANT in writing whether a TOP has been accepted. A TOP not accepted in writing shall be deemed rejected.

E. Rejection of TOP

If a TOP or its revision is rejected, neither party shall have any rights or obligations arising out of the TOP or TOPR.

F. Acceptance of TO

Each TO shall be placed into effect by the Project Director and by the acceptance of the CONSULTANT. In addition, at any time during the course of the TO performance, the Project Director may revise the TO by project direction, subject to acceptance by CONSULTANT.

G. Conflict of Interest

Each TO shall incorporate the provisions of this Agreement by reference. A conflict of interest review will be performed by BART prior to issuing project direction under a TO.

1.3 MANAGEMENT PLAN AND PROCEDURES

A. Management Plan

In response to a TOPR from BART, as a minimum, CONSULTANT shall submit with each TOP the following:

1. A list of key personnel assigned as defined by Article 1.5 below.
2. CONSULTANT's DBE participation goal and CONSULTANT's plan for obtaining its goal. All DBEs shall be certified by BART or possess DBE certification which BART recognizes, prior to issuance of a Notice to Proceed.

CONSULTANT agrees not to make any substitution of subconsultants without prior approval of the Project Director after a TOP has been accepted in writing by the Project Director.

B. Management Procedures

Apart from any specific TOs, CONSULTANT and those subconsultants at any tier that BART at its discretion may identify, shall develop, implement and maintain procedures, all subject to approval by the Project Director, who gives direction as to the performance of the work by CONSULTANT or subconsultant personnel, including, but not limited to, performance of TOs.

The intention of the parties is for CONSULTANT or its subconsultants, to develop, implement and maintain clear, concise, and project specific procedures to give BART reasonable

assurances that all charges for direct labor and other direct costs are relevant and necessary to accomplish the TO scope.

1.4 PROJECT AND ORGANIZATIONAL PROCEDURES

A. Modification of Procedures

At the direction of the Project Director, pursuant to a TO, CONSULTANT shall develop or modify previously proposed TO project specific procedures in accordance with a schedule and in a form approved by the Project Director. Such procedures as developed or modified shall be specifically related to activities performed for the TO project and basic CONSULTANT functions including, but not limited to, the process of budgeting, invoicing, and submitting reports to BART hereunder. The intention of the parties is for CONSULTANT to develop, implement and maintain clear and concise TO project specific procedures.

B. Additional Modifications

In addition to any specific TO project procedures as described immediately above, and apart from any specific TOs, BART may require CONSULTANT to revise its TO project procedures other than those set forth immediately above in Article 1.3 that are used throughout its organization if they conflict with the requirements of this Agreement.

1.5 PERSONNEL

A. Key Personnel

CONSULTANT and BART agree that the personnel listed in Attachment B, KEY PERSONNEL LIST, incorporated herein and by this reference made a part hereof, shall be designated as key personnel. CONSULTANT shall also make every effort to insure that the key personnel maintain, at a minimum, eighty percent of their proportionate share of the estimated number of hours for a TO.

CONSULTANT shall not remove any such key personnel prior to the completion of his/her assignment under the Project without the prior written approval of the Project Director, which approval will not be unreasonably withheld. CONSULTANT shall nominate a replacement individual to BART and shall not remove any individual from the Project until his/her replacement has been approved by the Project Director.

B. Notice of Temporary Assignment

CONSULTANT shall provide the Project Director with written notice of the temporary assignment of any personnel to an individual TO Project.

C. Removal of Personnel

BART's Project Director reserves the right to direct removal of any CONSULTANT or subconsultant personnel assigned to the Project when in BART's opinion the individual's performance is unsatisfactory.

1.6 FINANCIAL ADMINISTRATION

Apart from any specific TOs, CONSULTANT and its subconsultants at any tier shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subconsultants' accounting systems shall conform to generally accepted accounting principles and the following requirements:

A. Cost Breakdown

All such records shall provide, as a minimum, a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers.

B. Labor Charging Procedures

For work performed on a basis other than fixed price, CONSULTANT and those subconsultants at any tier that BART at its discretion may require, shall develop, implement and maintain labor charging (i.e. time card, or payroll) procedures that meet the following criteria:

1. All time records shall be in writing, recorded by the employee and verified by the immediate supervisor. Such records shall (i) be complete, (ii) record all employee's activities, Project and non-Project related, within a given accounting period and (iii) identify by means of cost codes what activities were being performed.
2. All charges for labor (direct/indirect or hourly as appropriate) by personnel for the Project shall be identifiable to the nearest half-hour.

C. Cost Reimbursement Services

For those services performed on a cost reimbursable basis by CONSULTANT and those subconsultants at any tier that BART at its discretion may require, the following shall apply:

1. For all indirect cost groupings, budgets shall be developed on an annual basis which coincide with the entity's fiscal year.
2. The system of accounting shall as a minimum, (i) report on a quarterly basis, a comparison between the actual indirect costs incurred to that budgeted, and (ii) reconcile all compensation for direct costs including, but not limited to, payroll, inventory and accounts payable against incurred cost, as set forth in Article 3.1, COMPENSATION.

D. Approval of Procedures

BART's Manager, Contract Administration, (i) may approve existing procedures that meet these criteria as well as waive certain specific requirements of this Article (provided that such approvals or waivers are made in writing); or (ii) may require copies of any of this accounting material, records, reports or procedures.

2.0 TIME OF PERFORMANCE AND DELAYS

2.1 TIME OF PERFORMANCE

A. Performance of Scope of Service

CONSULTANT's performance of Scope of Services as described in Attachment A shall commence upon receipt of a Notice to Proceed issued by the Project Director or designate for each respective TO and shall be completed within the number of calendar days specified in such TO, unless terminated earlier in accordance with Article 5.0, TERMINATION, or the limit on maximum compensation established in Article 3.1, COMPENSATION, of this Agreement.

B. Term of Agreement

The term of this Agreement will be three (3) years from the effective date of Notice to Proceed for this Agreement, subject to termination as provided for in the Agreement.

2.2 DELAYS

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of the public enemy and governmental acts beyond the control and without fault or negligence of the affected party.

Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder or prevent performance of any obligations under this Agreement.

3.0 COMPENSATION AND PAYMENT

3.1 COMPENSATION

A. Basis

The compensation for each TO performed under this Agreement will be on a fixed price basis, an incurred cost reimbursement basis plus a defined fee, or some combination thereof. Such compensation will be allowable only to the extent that costs incurred or cost estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles (Title 48, Code of Federal Regulations, Chapter 1, Part 31).

B. Requirements

Such compensation shall be further subject to the following requirements:

1. Conform with:
 - a. the work to be performed pursuant to an accepted TO;
 - b. any compensation limits or sublimits set forth in such TO(s), and this Agreement; and
 - c. all other terms of this Agreement.
2. Be necessary in order to accomplish the work.
3. Be reasonable for the services to be performed or goods to be purchased in connection with the performance of services hereunder.
4. Be actual net costs or prices to the CONSULTANT or its subconsultants at any tier, (e.g. the cost or price less any refunds, rebates, or other items of value received by CONSULTANT or its subconsultants at any tier, that have the effect of reducing the cost or price actually incurred).

As used herein, the term "costs" shall include the following:

- a. Those costs recorded by CONSULTANT that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.
- b. When CONSULTANT is not delinquent in payment of costs of agreement performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
 - (1) Direct labor;
 - (2) Other direct costs that are not subcontracted;
 - (3) Indirect costs.

- c. The amount of reimbursement that has been paid by CONSULTANT for subcontracted services under similar cost standards.
5. Be for direct costs or prices incurred for work performed after the effective date of this Agreement, and presented for payment within one hundred eighty days (180) days of the incurrence.

C. Notification

The CONSULTANT shall inform the Project Director when total expenditures for all approved TOs exceed eighty percent of the maximum compensation for this Agreement.

D. CONSULTANT Costs

All CONSULTANT costs associated with providing services that are identified in this Agreement as being apart and separate from any individual TO, are considered to be either indirect costs or a portion of the CONSULTANT fee, as the case may be.

E. Compensation Limits

Subject only to changes made in conformance with Article 4.0, CHANGES AND MODIFICATIONS, below, it is expressly understood and agreed that:

1. In no event shall CONSULTANT be compensated in an amount greater than the amount in an individual TO, for services performed under such TO; and
2. In no event will the total compensation and reimbursement for expenses to be paid CONSULTANT for services described in Article 1.1, SCOPE OF SERVICES, above and services described in Attachment A hereto, exceed \$375,000.00. However, there is no guaranteed minimum level of compensation.

3.2 DISALLOWED OR OTHERWISE UNRECOGNIZED COSTS

CONSULTANT understands and agrees to the following:

A. Waiver

Any compensation or reimbursement received under this Agreement does not constitute a final decision by the District as to the allowability of such compensation or reimbursement and does not constitute a waiver of any violation by CONSULTANT of the terms of this Agreement (including, but not limited to, requirements of the Agreement to be included in CONSULTANT's subcontracts).

B. Final Determination

Unless approved otherwise by the Project Director, the District will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of this work performed under this Agreement has been completed.

C. Notification

If the District determines that CONSULTANT or its subconsultant(s) is not entitled to either the compensation or reimbursement requested or received, the District will notify CONSULTANT stating the reasons therefor.

D. Return of Funds

Completion of the work under this Agreement will not alter CONSULTANT's or its subconsultant(s)' obligation to return any funds due the District as a result of later refunds, corrections, or other transactions, nor alter the District's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

3.3 METHOD OF PAYMENT

A. Monthly Invoices/Subconsultant Payment

Unless approved otherwise by the Project Director, CONSULTANT's services shall be invoiced on a monthly basis and payment will be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Project Director. As used herein, the term "invoice" shall include the CONSULTANT's bill or written request for payment under this Agreement for services performed. All invoices shall be made in writing and submitted with two duplicates at a minimum.

The CONSULTANT shall promptly pay any and all subconsultants by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The CONSULTANT shall include in its monthly invoice submission to BART, amounts to pay for all subconsultants' acceptable invoices, no later than 30 days after receipt of such invoices. Unless otherwise approved in writing by the Project Director, CONSULTANT shall, within ten (10) calendar days after receipt of the payment made by BART, pay to each of its immediate subconsultants (or their respective assignees), for satisfactory performance of its contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to CONSULTANT by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If the CONSULTANT determines the work of the subconsultant to be unsatisfactory, the CONSULTANT must immediately notify in writing the Project Director (and the Office of Civil Rights if the subconsultant is DBE) and state the reasons therefor. Failure by CONSULTANT to comply with this requirement will be construed to be a breach of contract and may result in sanctions as specified in this Agreement.

In addition, the CONSULTANT must promptly return any retentions withheld to a subconsultant within thirty days after the subconsultant's work is satisfactorily completed.

B. Invoice Procedures

CONSULTANT shall invoice for the then current TO in conformance with procedures approved by the Project Director and the then current Rate Agreement.

1. Such invoices shall segregate current costs from other costs. Current costs are those costs which have been paid within the last sixty calendar days and not previously submitted to BART for reimbursement. Other costs shall include, but not be limited to, the following:
 - a. Costs for which the District has requested additional justification for allowance;
 - b. Costs which have been recorded by CONSULTANT in the current accounting period and not incurred as an obligation within the last ninety calendar days.
2. Costs for individual labor shall be identified by activity and product in a manner consistent with that of the detailed cost estimate submitted with CONSULTANT's TOP.
3. Notwithstanding the above, in no case shall CONSULTANT invoice for costs which BART has disallowed or otherwise indicated that it will not recognize.

C. Invoice Requirements

Such invoices shall be, as a minimum, (i) mechanically accurate, (ii) substantially vouchered and properly supported and (iii) in compliance with the specific requirements of Article 1.6, FINANCIAL ADMINISTRATION above.

D. Certification

CONSULTANT shall also certify, for each invoice, that (i) the hourly rates for direct labor, whether for CONSULTANT or its subconsultant(s), to be reimbursed under this Agreement are not in excess of the actual hourly rates in effect for CONSULTANT or subconsultant employees engaged in the performance of services under this Agreement at that time, and (ii) that such hourly rates are in conformance with the then current Rate Agreement.

E. Fixed Fee

The fixed fee for CONSULTANT or any of its subconsultants shall be billed monthly on a percent complete basis as approved by the Project Director.

BART in its sole discretion may make any of the remaining fixed fee payments due CONSULTANT, or any of its subconsultants, in full; or may withhold any amount up to one hundred percent thereof as BART may find appropriate, based on the progress of CONSULTANT and/or any of its subconsultants.

F. Invoice Submittal Address

All invoices shall be made in writing and delivered or mailed to BART as follows:

By US mail:	San Francisco Bay Area Rapid Transit District P. O. Box 12688 Oakland, California 94604-2688
Attention:	Assistant Controller
By Personal Delivery or Express Mail:	San Francisco Bay Area Rapid Transit District 300 Lakeside Drive, 22 nd Floor Oakland, California 94612
Attention:	Assistant Controller

G. Taxpayer Identification Number

CONSULTANT represents that CONSULTANT's taxpayer identification number (TIN) is _____ as evidenced by a completed Federal Form W-9 on file with the Assistant Controller on the date of execution of this Agreement. CONSULTANT agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by BART to the Internal Revenue Service pursuant to that Section.

3.4 WITHHOLDING OF PAYMENT

BART reserves the right to withhold payment(s) otherwise due CONSULTANT in the event of CONSULTANT's material non-compliance with any of the provisions of this Agreement, including, but not limited to, the requirements imposed upon CONSULTANT in Article 6.0, INSURANCE; Article 8.0, INDEMNIFICATION; and Article 9.1, WARRANTY OF SERVICES, below. BART shall provide notice of withholding, and may continue the withholding until CONSULTANT has provided evidence of compliance which is acceptable to BART.

4.0 CHANGES AND MODIFICATIONS

BART reserves the right to order changes to this Agreement, and modifications to TOs, to be performed pursuant to this Agreement, as set forth below.

4.1 CHANGES

A. Services

BART reserves the right to order changes to this Agreement including but not limited to, the services to be performed by CONSULTANT. All such changes shall be incorporated in written change orders duly executed by BART and CONSULTANT, which shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

B. Execution

Any such services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

4.2 MODIFICATIONS

A. Task Order Modifications

BART reserves the right to order modifications to TOs, including but not limited to, the services to be performed by CONSULTANT pursuant to an accepted TO. All such modifications to a TO shall be incorporated in written TOMs, executed by the Project Director and the CONSULTANT, which shall specify the modifications ordered and the adjustment of compensation and completion time required therefor.

B. Additional Compensation

Any such services added to the scope of this Agreement by a TOM shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time with respect to a TO shall be recognized unless contained in a duly executed TOM. The parties also understand and agree that CONSULTANT will not be reimbursed for costs incurred prior to the effective date of a duly executed TOM.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

BART may, at any time prior to completion of the work under any TO or the work under this Agreement, terminate any such TO, or this Agreement whenever BART determines that such termination is in its best interest, by written notice to CONSULTANT. BART's written notice to CONSULTANT shall state in detail the extent of such termination with respect to TO, or this Agreement. Effective on receipt of such notice of termination from BART, no new work or obligation with respect to such TOs, or this Agreement will be undertaken by CONSULTANT unless so directed by BART in writing. Upon such termination, CONSULTANT shall submit an invoice or invoices to BART in amounts which represent the compensation specified herein for services actually performed to the date of such termination and for which CONSULTANT has not been previously compensated. Upon payment of the amount due, BART shall be under no further obligation to CONSULTANT, financial or otherwise, with respect to terminated TOs, or this Agreement if it is terminated.

5.2 TERMINATION FOR CAUSE

If CONSULTANT should be in default and fails to remedy this default within five days after receipt from BART of notice of such default, BART may in its discretion terminate this Agreement or such portion thereof as BART determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Agreement; abandonment, assignment or subletting of the Agreement without approval of BART; bankruptcy or appointment of a receiver for CONSULTANT's property; failure of CONSULTANT to perform the services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Agreement in bad faith.

Upon BART's termination of this Agreement or any portion thereof for default by CONSULTANT, BART reserves the right to complete the work by whatever means it deems expedient and the expense of completing such work as well as any and all damages proximately caused by the default shall be charged to CONSULTANT.

5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by BART, in its discretion, upon application therefor by CONSULTANT for unforeseen causes beyond the control and without the fault or negligence of CONSULTANT, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrevocably disrupt or render impossible CONSULTANT's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of CONSULTANT to foresee or make preparation in defense against.

6.0 INSURANCE

At all times during the life of this Agreement to acceptance of the work covered by the Agreement, or as may be further required by the Agreement, CONSULTANT, at its own cost and expense, shall provide the insurance specified in this Article 6.0, unless otherwise approved in advance and in writing by the District's Department Manager of Insurance.

A. Evidence Required

At or before execution of this Agreement and at such other times as BART may request, CONSULTANT shall provide BART with Certificate(s) of Insurance executed by an authorized representative of the insurer(s) evidencing the CONSULTANT's compliance with the insurance requirements in this Article 6.0. The Certificate(s) shall reference the BART Agreement Number and Title to which the Certificate relates. In addition, a copy of all required endorsements shall be included with and attached to the Certificate(s) of Insurance.

B. Notice of Cancellation, Reduction or Material Change in Coverage

All policies shall be endorsed to provide the District with thirty (30) days prior written notice of any cancellation, reduction, or material change in coverage. Notices shall be sent to the Department Manager, Insurance, San Francisco Bay Area Rapid Transit District, P.O. Box 12688, Oakland, California, 94604-2688. The CONSULTANT shall annually submit to the District's Manager of Insurance certifications confirming that the insurance required has been renewed and continues in place.

C. Qualifying Insurers

Policies shall be issued by California admitted companies which hold a current policyholders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

D. Insurance Provided by CONSULTANT

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of One Million Dollars \$1,000,000 per occurrence and One Million Dollars _(\$1,000,000) annual general aggregate.
 - a. Coverage shall include:
 - (1) Premises and Operations;
 - (2) Broad Form Property Damage;
 - (3) Products and Completed Operations;
 - (4) Broad Form Contractual liability, expressly including liability assumed under the Agreement;
 - (5) Personal Injury Liability;
 - (6) Independent Contractors Liability;
 - (7) Cross Liability and Severability of Interest.
 - b. Such insurance shall include the following endorsements, copies of which shall be provided to the District:
 - (1) Inclusion of BART, its directors, officers, representatives, agents and employees as additional insured as respects to CONSULTANT's operations under this Agreement; and
 - (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss.
2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides limits of liability of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.
3. Workers' Compensation/Employers Liability Insurance for Statutory Workers Compensation and Employers Liability Insurance for not less than One Million Dollars (\$1,000,000) per accident applicable to Employer's Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include Broad Form All States/Other States coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of BART, its directors, officers, representatives, agents and employees; a copy of which shall be provided to BART. Should any such work be subcontracted, CONSULTANT shall require each subcontractor of any tier to similarly comply with this Article 6.0, all in strict compliance with Federal and State law.
4. Professional Liability Insurance for damages arising out of CONSULTANT's acts, errors or omissions. The policy shall provide a coverage limit of not less than One Million Dollars _(\$1,000,000) per claim/aggregate as respects CONSULTANT's services provided under this Agreement. Such insurance shall be maintained for a period of not less than two (2) years following completion of services.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT, and any approval of said insurance by the District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant to this Agreement including but not limited to the provisions concerning indemnification.

2. The District acknowledges that some insurance requirements contained in this article may be fulfilled by a funded self-insurance program of CONSULTANT. However, this shall not in any way limit liabilities assumed by CONSULTANT under this Agreement. Any self-insurance program must be approved in writing by the District.
3. Should any of the work under this Agreement be subcontracted, CONSULTANT shall require each of its subconsultant(s) of any tier to provide the aforementioned coverage's, or CONSULTANT may insure subconsultants(s) under its own policies.
4. The District reserves the right to withhold payments to CONSULTANT in the event of material noncompliance with the insurance requirements of this article.

7.0 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of BART and has no authority to contract or enter into any other agreement in the name of BART. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

In its capacity as an independent contractor, CONSULTANT shall comply with any and all BART operations rules and procedures which relate to the performance of its services on BART property. Prior to commencing services, the Project Director may loan CONSULTANT a copy of the District's Operations Rules and Procedures which shall be returned upon the completion or termination of CONSULTANT's services hereunder.

7.1 CONFLICT OF INTEREST

CONSULTANT, its subconsultants and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest, including but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1E, Third Party Contracting Requirements) and California law (see, e.g., Government Code Section 1090 et seq., Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations).

When, in the judgment of BART, it is necessary in order to avoid any potential conflicts of interest, CONSULTANT, its subconsultants and suppliers may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services under this Agreement.

7.2 CONSULTANT PERSONNEL

CONSULTANT shall ensure that any person employed by CONSULTANT, whose duties include work on matters involving BART, is made aware that he or she is required to immediately disclose to CONSULTANT any offer of employment from any person or entity currently doing business with BART or proposing to do business with BART. CONSULTANT shall immediately so notify BART's Office of the General Counsel and ensure that unless, and until the offer of employment is unequivocally rejected by CONSULTANT's employee in writing and a copy of this rejection is transmitted to BART's Office of the General Counsel, CONSULTANT shall remove such employee from any projects or services relating to BART. Failure of CONSULTANT to comply with the provisions of this section may result in termination of this Agreement by BART for default upon written notice to CONSULTANT.

7.3 FINANCIAL CONTRIBUTION LIMITATION

CONSULTANT shall not make any monetary or in-kind contributions (including loans) to any BART Director, or any candidate for Director, for three months following award of this Agreement.

The term "contribution" shall have the same meaning as defined in California Government Code Section 82015 and implementing regulations adopted by the Fair Political Practices Commission.

CONSULTANT shall include the language of this provision in subcontracts for any first tier subcontractor whose subcontract exceeds \$100,000.

8.0 INDEMNIFICATION

CONSULTANT shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees, and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of CONSULTANT, its officers, agents, employees and subconsultants or any of them, under or in connection with this Agreement; and CONSULTANT agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of CONSULTANT's services, and to pay and satisfy any resulting judgments.

Such indemnification includes without limitation any violation of proprietary rights, copyrights and rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

9.0 WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT

9.1 WARRANTY OF SERVICES

A. Warranty

CONSULTANT warrants that its consulting services will be performed in accordance with the standards imposed by law upon professional engineering service firms performing engineering services of a similar nature at the time such services are rendered. In addition CONSULTANT shall provide such specific warranties as may be set forth in individual TOs as agreed upon by the parties.

B. Re-performance

In the event that any services provided by CONSULTANT hereunder are deficient because of CONSULTANT's or a subconsultant's failure to perform said services in accordance with the warranty standards set forth above, BART shall report such deficiencies in writing to CONSULTANT within a reasonable time. BART thereafter shall have:

1. The right to have CONSULTANT re-perform such services at CONSULTANT's own expense, or
2. The right to have such services done by others and the costs thereof charged to and collected from CONSULTANT if, within thirty days after written notice to CONSULTANT requiring such reperformance, CONSULTANT fails to give evidence satisfactory to BART that it has undertaken such reperformance.

C. Re-performed Services

If CONSULTANT is required to correct or re-perform any services as provided in Article 9.1 B.1. (immediately above), any services corrected or re-performed by CONSULTANT shall be subject to this Article 9.1 to the same extent as work initially performed.

9.2 MATERIAL NONCOMPLIANCE BY CONSULTANT

BART reserves the right to withhold payments to CONSULTANT in the event of CONSULTANT's material noncompliance with Articles 8.0, INDEMNIFICATION and 9.0, WARRANTY OF SERVICES AND MATERIAL NONCOMPLIANCE BY CONSULTANT, above.

10.0 DATA TO BE FURNISHED BY BART

All data, reports, surveys, studies, drawings, and any other documents and materials made available to CONSULTANT by BART for use by CONSULTANT in the performance of its services under this Agreement shall be made available for information only and shall be returned to BART at the completion or termination of this Agreement.

11.0 OWNERSHIP OF WORK PRODUCTS

11.1 DOCUMENTS

Subject to any rights due to the United States Government under a grant of the FTA or other federal agency assisting the financing under this Agreement, all drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by CONSULTANT or obtained from others ("Subcontractors") by CONSULTANT in connection with the services under this Agreement shall be the property of BART; and copies shall be delivered to BART promptly upon the completion of the work or upon an earlier termination of this Agreement. CONSULTANT shall be responsible for the preservation of any and all Work Products prior to transmittal to BART; and CONSULTANT shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to BART.

11.2 ASSIGNMENT OF RIGHTS

Subject to any rights due to the United States Government under a grant of the FTA or other federal agency assisting the financing under this Agreement, CONSULTANT hereby assigns to BART all rights, title and interest including, but not limited to, copyright, patent, trademark and trade dress rights, in and to the Work Products. CONSULTANT acknowledges BART's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer or otherwise exploit ("Use"), and permit others to Use all or any part of the Work Products, and to obtain and hold in its own name patents, copyright and/or trademark registrations for the Work Products. CONSULTANT shall provide all documentation, information and assistance reasonably required by BART to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

11.3 WARRANTY OF WORK PRODUCT

CONSULTANT warrants and represents that the Work Products are original to CONSULTANT or its Subcontractors and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent or other intellectual property or proprietary rights of any third party; CONSULTANT will not attempt to license or transfer to any person or entity any interest in the Work Products; and CONSULTANT shall obtain from all Subcontractors written assignment of all rights, title and interest, including copyright and other intellectual property rights, in their contributions to the Work Products.

12.0 PATENTS

CONSULTANT agrees to communicate promptly to BART full particulars with respect to any and all improvements and inventions (whether or not patentable) conceived by it in connection with work performed by it hereunder. Subject to rights due to the United States Government under a grant of the FTA assisting the financing under this Agreement, such improvements and inventions

shall become the property of BART and CONSULTANT agrees to assign to BART, upon BART's request, all of its right, title and interest in and to ideas and inventions and in and to any and all patents and applications for patents based thereon, including both United States and foreign patents and applications for patents. CONSULTANT further agrees, upon BART's request and at BART's expense, to execute such proper instruments and to perform such proper acts as may be deemed by BART necessary to evidence BART's title to said improvements and inventions, and to enable BART to obtain such patents and any continuations, reissues or extensions thereof.

13.0 MATTERS CONFIDENTIAL AND PRIVILEGED

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by CONSULTANT, obtained from others by CONSULTANT or made available to CONSULTANT by BART in connection with the services under this Agreement, shall be treated as confidential by CONSULTANT. At no time shall CONSULTANT use or disclose or make available, other than in the performance of CONSULTANT's services for BART, confidential information gained in the course of or by reason of CONSULTANT's retention by BART and/or performance of services for BART, nor shall CONSULTANT permit such use or disclosure, without prior written approval by BART. It is the intention of BART to preserve and make use of all applicable legal privileges, and CONSULTANT shall make all reasonable efforts to cooperate with BART in this regard.

14.0 SUBCONTRACTS

A. Approved Subcontracts

CONSULTANT shall use approved subconsultants as shown in Attachment D hereto and as listed in each TO. CONSULTANT shall not further subcontract all or any portion of its services under this Agreement or a TO, without the prior written approval of the Project Director and any attempt to do so shall be void and unenforceable. Written approval by the Project Director of use of a subconsultant for specified services in connection with one TO or project shall not constitute approval for any other purpose. In the event that CONSULTANT enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subconsultants shall be solely and directly responsible to CONSULTANT, and BART shall have no obligation to them.

B. Subcontract Provisions

CONSULTANT agrees that the requirements in Articles 1.3 B, 1.4, 1.5, 1.6, 3.1A, 3.1B, 3.2 and 4.0 through 31.0, inclusive, of this Agreement, will be included in every subcontract entered into relating to services under this Agreement. Upon request, the CONSULTANT shall provide BART with copies of all such subcontracts, with changes and amendments thereto.

15.0 ASSIGNMENT OF AGREEMENT

CONSULTANT shall not assign this Agreement, or any part thereof, without the prior express written consent of the Project Director, and any attempt to do so shall be void and unenforceable.

16.0 RECORDS

CONSULTANT shall maintain full and adequate records to show the actual time devoted and the cost incurred by CONSULTANT with respect to the performance of services under this Agreement. CONSULTANT and its subconsultants shall establish and maintain records pertaining to the fiscal activities of the Project. CONSULTANT's and subconsultants' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers.

17.0 AUDIT

CONSULTANT and its subconsultants shall permit BART and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONSULTANT's and subconsultant's books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONSULTANT pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

A. Audit Interviews

CONSULTANT shall arrange audit entrance and exit interviews in which CONSULTANT and/or its subconsultants and BART and/or its authorized representatives will participate.

B. Accessing Documents

CONSULTANT's and its subconsultants' accounting divisions shall provide instruction to BART on accessing documents.

C. Letter of Representation

CONSULTANT's management, or the management of a subconsultant, as well as the management of their appropriate units, will provide at BART's request a letter of representation concerning such matters as BART determines appropriate.

BART further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three-year period following the final payment under this Agreement and until all pending matters are closed; and CONSULTANT and its subconsultants shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

18.0 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

If any price, including profit or fee, negotiated in connection with, or any reimbursement of cost including profit or fee, under this Agreement, any TO, modifications thereto, Rate Agreement or change order to this Agreement was increased because CONSULTANT furnished cost or pricing data that were not complete, accurate, and current at such time as the price was determined, the price or cost shall be reduced accordingly and the Agreement, TO(s)], Rate Agreement(s), or change order(s) and any applicable invoice(s) shall be modified to reflect the reduction.

If BART determines that a price or cost reduction should be made, CONSULTANT agrees not to raise the following matters as a defense:

A. Bargaining Position

CONSULTANT was the sole source supplier or otherwise was in a superior bargaining position and thus the price would not have been modified even if accurate, complete and current costs or pricing data had been submitted;

B. Cost and Pricing Data

BART should have known that the cost or pricing data in issue were defective even though CONSULTANT took no affirmative action to bring the character of the data to the attention of BART;

C. Item Cost

The price was based on an agreement about the total cost of the work and there was no agreement about the cost of each item procured under the Agreement.

19.0 NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3.0, COMPENSATION AND PAYMENT, above, and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or facsimile transmission. Notices shall be effective upon receipt at the following addresses:

To BART by US Mail: San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, California 94604-2688

Attention: Scott Schroeder, Project Director

To BART by Personal Delivery or Courier Service: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 22nd Floor
Oakland, CA 94607

Attention: Scott Schroeder, Project Director

To CONSULTANT: To be determined

Attention: To be determined
Project Manager

Facsimile Transmission:

To BART: (510) 464-6011
To CONSULTANT: To be determined

Either party may change its address for notices by giving written notice of the new address as provided above.

20.0 NONDISCRIMINATION

The CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the District deems appropriate.

21.0 DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The District's Disadvantaged Business Enterprise ("DBE") Participation Program for the Agreement is as set forth below, and as supplemented by Attachment F, DISADVANTAGED BUSINESS

ENTERPRISE PARTICIPATION, attached hereto and incorporated herein by this reference. CONSULTANT assumes responsibility to be fully informed of the DBE Participation Program requirements.

A. DBE Participation

CONSULTANT commits to a DBE participation of not less than 20% under this Agreement which participation consists of the services to be performed by those DBEs approved as subconsultants pursuant to Article 14.0, SUBCONTRACTS, above.

B. Substitution of DBE Subconsultants or Suppliers

CONSULTANT will immediately notify the Project Director of a DBE's inability to perform, and shall provide reasonable documentation to substantiate such non-performance. Should substitution of any DBE subconsultant or supplier become necessary, CONSULTANT shall make good faith efforts, as defined in Article 21.0 E. below, Good Faith Efforts Regarding Substitution of DBE Subconsultants or Suppliers, in cooperation with BART's staff, to replace the affected DBE with another DBE. CONSULTANT shall provide completed DBE certification or application for each new DBE.

C. DBE Records

CONSULTANT shall maintain records to verify DBE participation as set forth in the Proposal and as modified in any way during the course of the Agreement. Such records shall show the name and business address of each DBE participating in the Agreement and the total dollar amount actually paid each DBE and the date of payment. A monthly report based on these records and certified to be correct by CONSULTANT shall be submitted to the Project Director with the monthly payment invoice. CONSULTANT shall include with the monthly report any other efforts made which are relevant to meeting the DBE goal. CONSULTANT shall submit with the first monthly report copies of all DBE subcontracts and purchase orders that have been entered into or issued in connection with the Agreement and shall submit with subsequent monthly reports copies of any such additional subcontracts or purchase orders. The monthly report shall include copies of all invoices submitted by each DBE during the reporting period. The District will verify with each DBE the amount actually paid to the DBE. No invoice will be approved for payment unless the current report and all required attachments have been furnished. DBE participation will not be counted toward CONSULTANT's DBE achievement until the DBE has been paid. Upon completion of the Agreement, a summary of these records shall be prepared and certified to be correct by CONSULTANT or its authorized representative, and shall be furnished to the District's Office of Civil Rights.

D. Change Orders

CONSULTANT shall prepare for the Project Director a statement regarding how any proposed change order may affect DBE subcontracting. CONSULTANT shall make good faith efforts to meet the DBE percentage goal set forth in Article 21.0 A. above in the performance of services under any change orders that may be issued under this Agreement. As used in this Article, "good faith efforts" to be undertaken by a CONSULTANT in connection with Change Orders are those that, given all relevant circumstances, a CONSULTANT actively and aggressively seeking to meet the DBE participation requirements would make. Only those efforts made prior to the District's determination of a failure to comply with the DBE participation requirements will be considered for evaluation of good faith efforts. The CONSULTANT assumes responsibility for being informed and complying with the Agreement's requirements. In determining whether good faith efforts regarding change orders have been made, the District will consider, on the basis of documentation timely submitted by the CONSULTANT, whether the actions taken by the CONSULTANT meet the good faith efforts requirements. Only steps taken by the CONSULTANT (as opposed to those taken on the CONSULTANT's behalf by a third party) will be considered.

E. Good Faith Efforts Regarding Substitution of DBE Subconsultants and Suppliers

Good faith efforts regarding substitution of DBE subconsultants and suppliers are those that, given all relevant circumstances, a CONSULTANT actively and aggressively seeking to meet the goal would make. Only those efforts made prior to the District's determination of a failure to comply with DBE participation requirements will be considered for evaluation of good faith efforts. The CONSULTANT assumes responsibility for being informed and complying with the DBE requirements.

In determining whether sufficient good faith efforts have been made, the District will consider the quality, quantity, and intensity of the different kinds of efforts that CONSULTANT has made.

1. The steps listed below are reflective of good faith efforts taken by a CONSULTANT actively and aggressively seeking to meet the DBE participation requirements. The District considers each of the listed steps particularly significant in evaluating a CONSULTANT's good faith efforts:
 - a. Advertisements soliciting subconsultant proposals for this Agreement from DBEs in trade association publications, women and/or minority focus media or other applicable daily or weekly newspapers or trade journals or other media in sufficient time to allow the DBEs to participate effectively. Such advertisements shall refer only to proposals for the District's Agreement and shall specify the categories of services for which subconsultant opportunities exist;
 - b. Solicitation of interest in this Agreement from DBEs evidenced by copies of registered or certified letters to relevant CUCP or RTCC-listed DBEs or to a reasonable number of certified DBEs in sufficient time to allow the DBEs to participate effectively;
 - c. Follow-up of initial solicitations of DBE interest in order to determine with certainty if the DBEs are interested;
 - d. Identification of portions of work to be performed by DBEs in order to increase the likelihood of meeting the goals (including, where appropriate, breaking down the work into economically feasible units to facilitate DBE participation, even where the CONSULTANT might otherwise prefer to perform these work items with its own forces);
 - e. Providing interested DBEs with adequate information about the scope of work and requirements of the Agreement in a timely manner to assist them in responding to a solicitation;
 - f. Negotiating in good faith with interested DBEs;
 - g. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
 - h. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required;
 - i. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 - j. Utilizing a database containing the names and addresses of firms certified by the Regional Transportation Coordinating Council (RTCC) which is available for review or purchase from the District's Office of Civil Rights at the District's Office, 1330 Broadway, Suite 1702, Oakland, California, telephone (510) 464-6183. The RTCC

Database may also be reviewed at the MTC-ABAG Library, 101 8th Street, Oakland, California. CONSULTANTS may also review the names and addresses of firms certified by the RTCC on the District's web site, www.bart.gov. CONSULTANTS can also review the names and addresses of firms certified under the CUCP on the following website: www.dot.ca.gov/hq/bep/downloads.html;

- k. Utilizing the services of available women/minority community organizations, minority/women contractors groups, local, state, and Federal minority/women business assistance offices, information services such as those provided by CUCP in order to identify certified DBEs for work under the Agreement. A listing of such organizations is available from the District's Office of Civil Rights, telephone (510) 464-6183.
2. CONSULTANT is required to provide to the District records of responses, proposals and/or other communications received from DBEs for specific proposal scope including:
 - a. The names, addresses, and telephone numbers of all DBEs contacted;
 - b. A description of the information provided to DBEs regarding the scope of work for portions of the work to be subcontracted;
 - c. The reasons for rejecting any DBE proposal scope submitted to the CONSULTANT;
 - d. A description of the investigation conducted of any DBEs rejected as unqualified;
 - e. A description of assistance provided to interested DBEs relative to obtaining plans, specifications, and required bonding or insurance;
 - f. A description of assistance provided to DBEs to obtain necessary equipment, supplies, materials, or related assistance or services;
 - g. A description of the use made by CONSULTANT of the services of available minority community organizations and minority contractor's groups.
 3. CONSULTANT's good faith efforts may be deemed insufficient by the District if CONSULTANT has failed to make any of the foregoing efforts, or has rejected DBE subconsultant proposals without adequate reason. If applicable, price alone will not be considered an adequate reason.
 4. A DBE database containing the names and addresses of firms certified by the Regional Transit Coordinating Council is available on the District's web site, located at www.bart.gov. In addition, you may contact the District's Office of Civil Rights at 1330 Broadway, Suite 1702, Oakland, California 94612, telephone (510) 464-6183.

F. Prompt Payment

CONSULTANT shall promptly pay any and all subcontractors. Specifically, unless otherwise approved in writing by the Project Director, CONSULTANT shall, within five (5) days after receipt of the payment by the District specified in this Agreement, but in no case more than thirty (30) calendar days from receipt of CONSULTANT's invoice whether or not payment has been made by the District, pay to each of its immediate subconsultants (or their respective assignees), for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amounts due and payable to CONSULTANT by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If CONSULTANT determines the work of the subconsultant to be unsatisfactory, CONSULTANT must immediately notify in writing the Project Director (and the Office of Civil Rights if the subconsultant is a DBE) and state the reasons therefor. Failure by CONSULTANT to comply with this requirement will be construed to be a breach of contract and may be subject to sanctions as specified in the Agreement.

In addition, CONSULTANT must promptly return any retentions withheld to a subconsultant within 30 days after the subconsultant's work is satisfactorily completed.

G. Noncompliance

Failure to comply with the above requirements shall be grounds for termination of this Agreement in whole or in part, or, at the discretion of BART, for withholding payments due CONSULTANT during the period of noncompliance.

22.0 SITE SECURITY AND ACCESS

Prior to commencement of services, CONSULTANT shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subconsultants and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of services hereunder. In the event CONSULTANT fails to comply with BART's site security requirements, CONSULTANT's personnel, including subconsultants and suppliers, may not be allowed on BART property or facilities. No extension of time for completion of services or additional compensation for delay claims shall be granted in the event such personnel are excluded from BART property or facilities.

23.0 LAWS AND REGULATIONS

CONSULTANT shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including BART, which relate to or in any manner affect the performance of this Agreement. This Agreement and any documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 6250 et seq., unless exempted by law.

Federal Requirements

This Agreement may be funded in part under a grant from the United States Department of Transportation, Federal Transit Administration (FTA). Federal requirements are set forth in Attachment G, UNITED STATES DEPARTMENT OF TRANSPORTATION REQUIREMENTS, incorporated herein and by this reference made a part hereof.

24.0 ADDITIONAL FUNDING AGREEMENT REQUIREMENTS

This Agreement is subject to any additional restrictions, limitations or conditions that may be required by any local, State or Federal funding agreements applicable to this Agreement.

25.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

26.0 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

27.0 COVENANT AGAINST CONTINGENT FEES

CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business. For breach or violation of this warranty, BART will have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

28.0 COVENANT AGAINST GRATUITIES

CONSULTANT warrants that it will not and has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of BART to secure favorable treatment in the awarding, amending or evaluating performance of the Agreement.

29.0 CAPTIONS

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only, and shall not be construed to affect the meaning of any provision hereof.

30.0 BENEFIT OF AGREEMENT

This Agreement shall bind and benefit the parties hereto and their assignees, successors and permitted assigns.

31.0 ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. CONSULTANT represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT

(NAME OF CONSULTANT)

By General Manager
(or designee)

By (Signature)

Name
and
Title _____

Print or Type

ATTACHMENT A

SCOPE OF SERVICES

The services to be performed by CONSULTANT shall consist of on-call services requested by the Controller-Treasurer or his designee. CONSULTANT shall report to the Controller-Treasurer or his designee. The requested services include, but not limited to, the following:

- 1) Discuss and recommend various financing alternatives including (but not limited to) taxable and tax exempt bonds, notes, commercial paper, shelf registration securities, lines of credit and inter-fund borrowing.
- 2) Meet with the General Manager, Assistant Treasurer, Assistant Controller, Executive Staff, Project Manager(s), and other designated BART employees to obtain a more specific understanding of the capital improvement program and to determine funding alternatives for major rehabilitation programs. Develop an initial timetable of events and responsibilities for the financial study.
- 3) Review all available written materials describing the capital improvements, schedules and existing funding sources (both internal and external). Obtain (as available) updated information, which may modify the existing financial studies for Extensions, New Car Procurement, and other projects as required.
- 4) Provide pricing and costing support for negotiated procurements as deemed appropriate.
- 5) Become aware of specific requirements and/or limitations of the District's enabling legislation. Review any specific requirements of federal, state or local funding sources.
- 6) Initiate contact (as necessary) with representatives of various outside federal, state and local funding sources for any needed information.
- 7) Compare computer models capable of analyzing the fiscal effect of various financing alternatives being considered.
- 8) At such time as deemed appropriate by the Controller/Treasurer, prepare written reports summarizing findings for distribution to the staff, outside agencies and/or the Board of Directors.
- 9) Be available on reasonable notice for meetings with the staff, other consultants and outside agencies. Be available, as requested, for Board of Directors meetings.
- 10) Upon submission and acceptance of a financial plan by BART, assist in the implementation of funding programs as directed.
- 11) Prepare time schedules for each task order.

ATTACHMENT B

KEY PERSONNEL LIST

ATTACHMENT B

KEY PERSONNEL LIST

Name

Position

ATTACHMENT D

PROJECT CONSULTANT TEAM

To be determined

(based on:
Exhibit 9 to RFP)

ATTACHMENT F

DISADVANTAGED BUSINESS

ENTERPRISE PARTICIPATION

ATTACHMENT F

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The San Francisco Bay Area Rapid Transit District ("BART" or the "District") is committed to carrying out all of the Disadvantaged Business Enterprise ("DBE") requirements of Title 49, Code of Federal Regulations Part 26, effective March 4, 1999, as amended from time to time. The procedures contained in the BART DBE Program will assure that all contracts and procurements are administered without discrimination on the basis of race, color, sex or national origin, and that DBEs have an equal opportunity to compete for and participate in the performance of all agreements, contracts and subcontracts awarded by the District.

It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex, ethnicity or national origin in the award and administration of federally funded contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for agreements, contracts and subcontracts, including but not limited to construction, procurement and proposal contracts, consulting and technical services agreements and purchase orders.

A. Definitions

1. Disadvantaged Business Enterprises (DBE)

- a. "Disadvantaged Business Enterprise (DBE)" means a for-profit small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of publicly-owned business, in which at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and which meets the requirements of 49 CFR Part 26, effective as of March 4, 1999.
- b. "Small business concern" means an existing small business as defined in Section 3 of the United States Small Business Act (15 USC Section 632) and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three fiscal years do not exceed \$17.42 million (as adjusted for inflation by the Secretary of DOT pursuant to 49 CFR Section 26.65(b)).
- c. "Socially and economically disadvantaged individuals" are presumed to include United States citizens (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts or Native Hawaiians), Asian-Pacific Americans, or Asian-Indian Americans, or any individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the United States Small Business Act, or certified as socially and economically disadvantaged by the District pursuant to 49 CFR Part 26. An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if she/he has a personal net worth exceeding \$750,000 (excluding the individual's ownership interest in the small business concern and his/her primary residence).

2. Resolution of Conflict Between Definitions - If there is a conflict between the above three definitions and the definitions of the California Unified Certification Program (CUCP) certification documents, the definitions in Section A.1 above shall prevail. A number of the firms listed in the CUCP DBE Database have been certified under prior DBE regulations. Proposers may need to verify any such firm's continued eligibility under the new DBE regulations, 49 CFR Part 26.

- B. DBE Participation Goal. The DBE participation goal for the Agreement is the stated percentage of the total estimated cost of CONSULTANT's services under the Agreement (including reimbursement for expenses, if

any) as set forth therein in Article 21.0, DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION, Subarticle 21.A.

C. DBE Participation

1. DBE Participation. DBE participation includes contracts (other than employee contracts) between DBEs and the CONSULTANT for any goods or services specifically required for the completion of the work under the Agreement. Only the work actually performed by a DBE's own forces will be counted toward the goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. A DBE may participate as a prime Contractor/Consultant, first tier subcontractor/consultant, joint venture partner with a prime Contractor/Consultant or first tier subcontractor/ consultant vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement provided that such vendor or supplier contracts directly with the prime Contractor/Consultant. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. The Proposer assumes responsibility for accurately identifying the first tier status of the DBE firms proposed in the DBE Information Form (Attachment A to this Exhibit 5).
2. Joint Venture. Responding Proposers are encouraged to explore joint venturing possibilities with DBEs for the work to be performed. A DBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control. Only that portion of the work that is performed solely by the DBE's forces can be counted towards DBE participation. The DBE joint venture must submit information for determining joint venture eligibility.
3. Function. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work or services and must carry out its responsibility by actually performing, managing and supervising the work or services involved.
4. Methodology for Determining Level of DBE Participation. Only those DBEs that have been certified prior to the date Proposals are due and which are listed in the Project Consultant Team Form (Exhibit 9 to this RFP) will be counted toward meeting the goal set forth in Section B., above. DBE participation will be counted as follows:
 - a. If the Proposal is submitted by a DBE prime Consultant/Contractor, only the portion of work that is actually performed by the DBE prime Consultant/Contractor. If the Proposal is submitted by a joint venture, only the portion of the work that is actually performed by the DBE's forces, or if the work is not clearly delineated between the DBE and the joint venture partner, the portion of the work equal to the DBE's percentage ownership interest in the joint venture.
 - b. The dollar value of all DBE subcontracts for work or services under the Agreement.
 - c. DBE achievement will not be counted toward the overall goal until the DBE firms have been paid.
 - d. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

ATTACHMENT G
UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT)
FEDERAL TRANSIT ADMINISTRATION (FTA)
REQUIREMENTS

ATTACHMENT G

UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT)

FEDERAL TRANSIT ADMINISTRATION (FTA)

REQUIREMENTS

- G1 General.** In performance of its obligations pursuant to this Agreement, the Consultant agrees to comply with all applicable provisions of federal, state, and local law, regulations, and FTA directives. The terms of the most recent amendment to any federal, state or local laws, regulations, FTA directives, and amendments to the grant or cooperative agreement providing funding for this Agreement that may be subsequently adopted, are applicable to the Agreement to the maximum extent feasible, unless the FTA provides otherwise in writing. The Federal or State regulations set forth in this Agreement to be observed in the performance of the Agreement are subject to change, and such changed requirements will apply to this Agreement as required. Consultant shall include in its Subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Attachment. Consultants failure to comply with these requirements shall constitute a material breach of this Agreement and may, in addition to other remedies, result in the withholding of progress payments to the Consultant.
- G2 False or Fraudulent Statements and Claims.** CONSULTANT shall comply with the following requirements:
- (a) The requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to CONSULTANT's actions pertaining to the Professional Services Agreement. Accordingly, by signing the Professional Services Agreement CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the underlying Professional Services Agreement. If CONSULTANT makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on CONSULTANT to the extent the Federal Government deems appropriate.
 - (b) If CONSULTANT makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on CONSULTANT the penalties of 19 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.
- G3 Exclusionary or Discriminatory Specifications.** Apart from inconsistent requirements imposed by Federal statute or regulations, CONSULTANT shall comply with the requirements of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.
- G4 No Federal Government Obligations to Consultant and Third Parties.** Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to Consultant, or any other third party in connection with the performance of the Agreement. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, contract, or subagreement, the Federal Government continues to have no obligations or liabilities to any party, including the Consultant.
- G5 Geographic Restrictions.** CONSULTANT shall refrain from using state or local geographic preferences, except those expressly mandated or encouraged by Federal statute, and as permitted by BART.
- G6 Reporting, Record Retention and Access.** CONSULTANT shall comply with the following requirements:

- (a) Record Retention. CONSULTANT shall, during the course of the Agreement and for three years after final payment, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Agreement as BART may require.
- (b) Access to Records. CONSULTANT shall permit BART, the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of CONSULTANT and its subconsultants pertaining to the Agreement. In accordance with 49 U.S.C. § 5325(a), CONSULTANT shall require each subconsultant to permit BART, the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that subconsultant agreement and to audit the books, records, and accounts involving that subconsultant agreement as it affects the Agreement.

G7 Debarment and Suspension. CONSULTANT shall comply with the following requirements:

- (a) CONSULTANT shall comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note; and U.S. DOT regulations on Debarment and Suspension at 49 C.F.R. Part 29.
- (b) CONSULTANT shall refrain from entering into any subconsultant agreement of any amount with a party included in the "U.S. General Services Administration's (U.S. GSA) List of Parties Excluded from Federal Procurement or Nonprocurement Programs," implementing Executive Orders Nos. 12549 and 12689, "Debarment and Suspension" and 49 C.F.R. Part 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order Nos. 12549 and 12689.
- (c) Before entering into any subagreement with a subconsultant, CONSULTANT shall obtain a debarment and suspension certification from each prospective subconsultant containing information about the debarment and suspension status and other specific information about the subconsultant and its "principals," as defined at 49 U.S.C. § 29.105(p). An example of the appropriate certification is contained in 49 C.F.R. Part 29, Appendix A.
- (d) CONSULTANT shall require each subconsultant to refrain from awarding any subagreement of any amount (at any tier) to a debarred or suspended subconsultant, and to obtain a similar certification from any subconsultant (at any tier) seeking a subagreement exceeding \$100,000. An example of the appropriate certification is contained in 49 C.F.R. Part 29, Appendix B.

G8 Buy America. CONSULTANT shall comply with 49 U.S.C. § 5323(j), FTA's Buy America regulations at 49 C.F.R. Part 661, and any amendments thereto, and any implementing guidance issued by FTA.

G9 Certification Regarding Lobbying. This Agreement is subject to the requirements of 31 U.S.C. Section 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 (to be codified at 2 U.S.C. Section 1601, et seq.) and U.S. DOT Regulations "New Restrictions on Lobbying" 49 C.F.R. Part 20. Consultant shall require that the "Certification Regarding Lobbying" set out in Appendix A to those Regulations and in the Bid Form be executed by its Subconsultants or subsuppliers of any tier receiving an amount in excess of \$100,000 under this Agreement and shall require such Subconsultants and subsuppliers to forward such certifications to Consultant, and Consultant shall forward such certifications and any disclosure forms to the District. Consultant and Subconsultants of each tier certifies that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any Federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. Section 1352. Consultant and Subconsultants shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-federal funds with respect to that Federal contract, grant

or award covered by 31 U.S.C. Section 1352. Such disclosures shall be forwarded from tier to tier to the District.

G10 Air Quality. CONSULTANT shall comply with the following requirements:

- (a) CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. Specifically:
 - (1) CONSULTANT shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.
- (b) CONSULTANT shall report and require each subconsultant at any tier to report any violation of these requirements resulting from any Project implementation activity of CONSULTANT or subconsultant to FTA and the appropriate U.S. EPA Regional Office.

G11 Clean Water. CONSULTANT shall comply with the following requirements:

- (a) CONSULTANT shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.
- (b) CONSULTANT shall report and require each subconsultant at any tier to report any violation of these requirements resulting from any Project implementation activity of a subconsultant or itself to FTA and the appropriate U.S. EPA Regional Office.

G12 Disadvantaged Business Enterprise. CONSULTANT shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

- (a) CONSULTANT shall comply with current U.S. DOT regulations on DBE participation in U.S DOT financial assistance programs, at 49 C.F.R. Part 26. CONSULTANT shall take all necessary and reasonable steps required by U.S. DOT regulations to ensure that eligible DBEs have an equal opportunity to compete for and participate in subagreements financed with Federal assistance awarded by U.S. DOT.
- (b) CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of a subagreement financed with Federal assistance derived from the U.S. DOT.
- (c) CONSULTANT must promptly pay subcontractors for satisfactory performance of their contracts.

G13 Americans with Disabilities Act. CONSULTANT shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and the following Federal regulations including any amendments thereto:

- (a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (c) U.S. DOT regulations, "Americans with Disabilities (DA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- (d) U.S. DOT regulations, "Nondiscrimination on the basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

- (e) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) U.S. General Services Administration (GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, "Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (j) Any implementing requirements FTA may issue.

G14 Preference for Recycled Products. To the extent practicable and economically feasible, CONSULTANT shall use recycled products pursuant to U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, which implement section 6002 of the Resource Conservation and Recover Act, as amended, 42 U.S.C. § 6962.

G15 Equal Employment Opportunity. CONSULTANT shall comply with the following equal employment opportunity (EEO) requirements:

- (a) General Requirements. CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT shall also comply with any implementing requirements FTA may issue.

G16 Civil Rights. CONSULTANT shall comply with the following requirements:

- (a) Compliance with Regulations. CONSULTANT shall comply and assure compliance by its subconsultants of any tier with all of the requirements of Title IV of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, 49 U.S.C. § 5332, and with the Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation (hereinafter called "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as "Regulations"), which are herein incorporated by reference and made a part of this Agreement.
- (b) Nondiscrimination. CONSULTANT, with regard to the work performed by it during this Agreement, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
- (c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by CONSULTANT of CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.

- (d) Information and Reports. CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by BART or the Federal Transit Administration (hereinafter called "FTA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information, CONSULTANT shall so certify to BART, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (e) Sanctions for Noncompliance. In the event of CONSULTANT's noncompliance with the nondiscrimination provisions of this Agreement, BART shall impose such Agreement sanctions as it or FTA may determine to be appropriate, including, but not limited to:
 - (1) Withholding of payments to CONSULTANT under the Agreement until CONSULTANT complies, and/or
 - (2) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (f) Incorporation of Provisions. CONSULTANT shall include the provisions of paragraphs (a) through (f) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. CONSULTANT shall take such action with respect to any subcontract or procurement as BART or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, CONSULTANT may request BART to enter into such litigation to protect the interests of BART and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

G17 Employee Protection Requirements. CONSULTANT shall comply with section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 through 332, and shall ensure that the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours, and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. CONSULTANT shall comply with the determinations pertaining to these requirements that may be made in accordance with applicable U.S. Department of Labor (DOL) regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

G18 Fair Labor Standards Requirements. CONSULTANT shall comply with the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 206 and 207, which apply to employees performing work under the Agreement.

G19 Seismic Safety. CONSULTANT shall comply with the requirements of U.S. DOT regulations applicable to seismic safety requirements for U.S. DOT assisted construction projects at 49 C.F.R. Part 41, (specifically, 49 C.F.R. Part 41.117), and any implementing guidance FTA may issue, to the acquisition of any new building and to additions to any existing building.

G20 Patent Rights.

- (a) General. If any invention, improvement, or discovery of CONSULTANT or any of its subconsultants is conceived or first actually reduced to practice and paid for in the course of or under the Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, CONSULTANT shall notify BART immediately and provide a detailed report.

- (b) Federal Rights. Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of BART, CONSULTANT, subconsultant and the Federal Government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, CONSULTANT agrees that, irrespective of its status or the status of any subconsultant or any subconsultant at any tier, CONSULTANT shall transmit to FTA those rights due the Federal Government in any invention resulting from this Agreement and as further described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (c) Restrictions on Access to Patent Rights. Nothing contained in this section shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

G21 Federal Rights in Data and Copyrights.

- (a) Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.
- (b) Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement:
 - (1) Except for its own internal use, the CONSULTANT may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the CONSULTANT authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to the public.
- (c) Federal Rights in Data and Copyrights. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes:
 - (1) Any subject data developed under a grant, or under cooperative agreement, or under a third party contract or subcontract, irrespective of whether or not a copyright has been obtained; and
 - (2) Any rights of copyright to which CONSULTANT purchases ownership with Federal assistance.
- (d) Special Federal Rights. CONSULTANT understands and agrees that, in addition to the rights set forth in Article (c) above, FTA may make available to any FTA recipient, subrecipient, third party CONSULTANT, or third party Subconsultant, either FTA's license in the copyright to the subject data derived under this Agreement or a copy of the subject data first produced under this Agreement. In the event that the CONSULTANT is not completed for any reason whatsoever, all data developed under the Agreement shall become subject data as defined in Article (a) above and shall be delivered as the District or Government may direct. This Article (d), however, does not apply to adaptations of automatic data processing equipment or programs for the CONSULTANT's use.
- (e) Hold Harmless. Unless prohibited by state law, the CONSULTANT agrees to indemnify, save, and hold harmless the district, the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the CONSULTANT of proprietary rights, copyrights, or right of privacy, arising

out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The CONSULTANT shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Government.

- (f) Application to Material incorporated into the Agreement. The requirements of Articles (b), (c) and (d) above do not apply to material furnished to the CONSULTANT by the Government and incorporated in the Work carried out under the Agreement; provided that such incorporated material is identified by the CONSULTANT at the time of delivery of such Work.

G22 Energy Conservation. CONSULTANT shall comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. § 6321 et seq.

G23 Metric System. To the extent required by U.S. DOT or FTA, CONSULTANT shall use the metric system of measurement in its Agreement, as may be required by 49 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other regulations, guidelines, and policies issued by U.S. DOT or FTA. To the extent practicable and feasible, CONSULTANT shall accept products and services with dimensions expressed in the metric system of measurement.

G24 Privacy.

- (a) CONSULTANT shall comply with, as assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government before CONSULTANT or its employees operate a system of records on behalf of the Federal Government. CONSULTANT understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.
- (b) CONSULTANT shall also include these requirements in each subagreement to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

G25 Support of Agreement Costs. All costs charged to the Agreement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges. The CONSULTANT shall permit the Government's authorized representatives to inspect all payrolls, records of personnel, invoices of materials and other relevant data and records, and to audit its books, records and accounts.

G26 Fly America. CONSULTANT shall comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their CONSULTANTS are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The CONSULTANT agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

G27 Environmental Protection. CONSULTANT shall comply with the following requirements:

- (a) CONSULTANT shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq. consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40

C.F.R. Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

- (b) CONSULTANT shall report and require each subconsultant at any tier to report any violation of these requirements resulting from any Contract activity of CONSULTANT or subconsultant to FTA and the appropriate U.S. EPA Regional Office.

EXHIBIT 4

CONFIDENTIAL

STATEMENT OF BUSINESS AND FINANCIAL QUALIFICATIONS

EXHIBIT 4

CONFIDENTIAL

STATEMENT OF BUSINESS AND FINANCIAL QUALIFICATIONS

Proposer shall complete the Statement of Business and Financial Qualifications below. In addition, Proposer submitting a proposal as a joint venture must have an executed Joint Venture Agreement as of the proposal due date and a copy of the Joint Venture Agreement shall be attached to this Exhibit 4. Proposers are free to attach additional material. Such material is to be attached to this Exhibit.

The information on this Proposer Sheet will be a factor in evaluating the awards.

1. Business Name of proposer:
 - a. Address: _____

 - b. Telephone No.: _____
 - c. Contact Person: _____
2. Form of Proposer Organization:
 - a. Is proposer a sole proprietorship? Yes ____ No ____
Name and address of Owner: _____

 - b. Is proposer a partnership, or joint venture? Yes ____ No ____
Name and address of Partners, or joint venturers: _____

 - c. Is proposer a limited partnership? Yes ____ No ____
Name and address of General Partner: _____

 - d. Is proposer a corporation? Yes ____ No ____
State of Incorporation: _____
Name of Officers: _____

Corporation Number: _____
Federal Taxpayer ID Number _____ (Reference Article 3.3.G, Exhibit 1)
3. Business License (documented) _____
Taxpayer ID Number (Federal) _____
4. How many years has your organization been in business under your present business name?

5. How many years of experience has your organization had? _____

10. How many years of experience have the key people had working in areas similar to these projects?

11. Where is the location of offsite work to be done?

Telephone No. _____

12. Have you or your organization failed to complete a contract? If so, give details:

13. Reference is hereby made to the following bank or banks as to financial responsibility of the proposer:

Name of bank _____

Street address _____

City and state _____

Telephone No. _____

Officer familiar with proposer's account _____

Name of bank _____

Street address _____

City and State _____

Telephone No. _____

Officer familiar with proposer's account _____

Name of bank _____

Street address _____

City and State _____

Telephone No. _____

Officer familiar with proposer's account _____

14. Reference is hereby made to the following surety company or companies as to the financial responsibility and general reliability of proposer:

Name of surety company _____

Name of local agent (if different) _____

Local address: _____

City and State _____

Telephone No. _____

Person familiar with proposer's Account _____

15. Provide as a part of this Exhibit, complete and audited financial statements (including all notes thereto) for your firm for the past three years. This should also include specific data that will allow BART to evaluate the indirect cost rate provided in the estimated cost for scope of services.

16. In what other line of business are you financially interested? _____

17. Is any litigation pending against your organization? If so, give details. _____

I declare under penalty of perjury that the foregoing is true and correct:

Executed on _____ day of _____, 20____, at

_____, _____
City State

Name of Proposer: _____

By: _____

Signature of Proposer or
Authorized Representative

Print Name and Title of
Person Signing

EXHIBIT 5

DISADVANTAGED BUSINESS

ENTERPRISE PARTICIPATION

EXHIBIT 5

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

The San Francisco Bay Area Rapid Transit District ("BART" or the "District") is committed to carrying out all of the Disadvantaged Business Enterprise ("DBE") requirements of Title 49, Code of Federal Regulations Part 26, effective March 4, 1999, as amended from time to time. The procedures contained in the BART DBE Program will assure that all contracts and procurements are administered without discrimination on the basis of race, color, sex or national origin, and that DBEs have an equal opportunity to compete for and participate in the performance of all agreements, contracts and subcontracts awarded by the District.

It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex, ethnicity or national origin in the award and administration of federally funded contracts. It is the intention of the District to create a level playing field on which DBEs can compete fairly for agreements, contracts and subcontracts, including but not limited to construction, procurement and proposal contracts, consulting and technical services agreements and purchase orders.

A. Definitions

1. Disadvantaged Business Enterprises (DBE)

- a. "Disadvantaged Business Enterprise (DBE)" means a for-profit small business concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of publicly-owned business, in which at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it and which meets the requirements of 49 CFR Part 26, effective as of March 4, 1999.
- b. "Small business concern" means an existing small business as defined in Section 3 of the United States Small Business Act (15 USC Section 632) and the Small Business Administration regulations implementing it (13 CFR Part 121), whose average annual gross receipts for the previous three fiscal years do not exceed \$17.42 million (as adjusted for inflation by the Secretary of DOT pursuant to 49 CFR Section 26.65(b)).
- c. "Socially and economically disadvantaged individuals" are presumed to include United States citizens (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Eskimos, Aleuts or Native Hawaiians), Asian-Pacific Americans, or Asian-Indian Americans, or any individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the United States Small Business Act, or certified as socially and economically disadvantaged by the District pursuant to 49 CFR Part 26. An individual cannot be presumed or determined on a case-by-case basis to be economically disadvantaged if she/he has a personal net worth exceeding \$750,000 (excluding the individual's ownership interest in the small business concern and his/her primary residence).

If there is a conflict between the above three definitions and the definitions of the California Unified Certification Program (CUCP) certification documents, the definitions in this section shall prevail. A number of the firms listed in the CUCP DBE Database have been certified under prior DBE regulations. Proposers may need to verify any such firm's continued eligibility under the new DBE regulations, 49 CFR Part 26.

B. DBE Participation Goal. The DBE participation goal for the Agreement is the percentage of the total estimated cost of CONSULTANT's service under the Agreement (including reimbursement for expenses, if any) as set forth herein and in the RFP Section entitled Disadvantaged Business Enterprise (DBE) Participation.

C. DBE Participation

1. DBE Participation. DBE participation includes contracts (other than employee contracts) between DBEs and the Consultant for any goods or services specifically required for the completion of the work under the Agreement. Only the work actually performed by a DBE's own forces will be counted toward the goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted. A DBE may participate as a prime Contractor/Consultant, first tier subcontractor/consultant, joint venture partner with a prime Contractor/Consultant or first tier subcontractor/consultant vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement provided that such vendor or supplier contracts directly with the prime Contractor/Consultant. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal. The Proposer assumes responsibility for accurately identifying the first tier status of the DBE firms proposed in the DBE Information Form (Attachment A to this Exhibit 5).
2. Joint Venture. Responding Proposers are encouraged to explore joint venturing possibilities with DBEs for the work to be performed. A DBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying requirements for ownership and control. Only that portion of the work that is performed solely by the DBE's forces can be counted towards DBE participation. The DBE joint venture must submit information for determining joint venture eligibility.
3. Function. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work or services and must carry out its responsibility by actually performing, managing and supervising the work or services involved.
4. Methodology for Determining Level of DBE Participation. Only those DBEs that have been certified prior to the date Proposals are due and which are listed in the Project Consultant Team Form (Exhibit 9 to this RFP) will be counted toward meeting the goal set forth in Section B., above. DBE participation will be counted as follows:
 - a. If the Proposal is submitted by a DBE prime Consultant/Contractor, only the portion of work that is actually performed by the DBE prime Consultant/Contractor. If the Proposal is submitted by a joint venture, only the portion of the work that is actually performed by the DBE's forces, or if the work is not clearly delineated between the DBE and the joint venture partner, the portion of the work equal to the DBE's percentage ownership interest in the joint venture.
 - b. The dollar value of all DBE subcontracts for work or services under the Agreement.
 - c. DBE achievement will not be counted toward the overall goal until the DBE firms have been paid.
 - d. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

D. DBE Information

1. Information Submitted with Proposal. The following information should be submitted as part of the Proposal:

- a. A completed Project Consultant Team Form (Exhibit 9 to this RFP), with the names of DBEs to be used, contact person, address, phone number, and a description of the work, services or supplies to be provided by each and the dollar value of each DBE transaction.
- b. A completed Schedule B – Information Form for Determining Joint Venture Eligibility for each proposed DBE joint venture, if required, can be obtained from the District's Office of Civil Rights.
- c. For Proposers whose Project Consultant Team Form (Exhibit 9 to this RFP) indicates that the DBE goal has not been met with CUCP certified DBEs, a written report with supporting documentation covering all good faith efforts listed in Section E. below shall be made by the Proposer prior to Proposal submission to meet the goal.
- d. The District may request additional information following its review, which information shall be submitted by the Proposer within five (5) business days of the telephone or facsimile request.
- e. As to any DBEs listed on the Project Consultant Team Form (Exhibit 9 to this RFP), Proposer is required to have obtained written commitments for the work or services in the amounts specified from the DBEs listed, prior to submission of the Proposal. The District may contact DBEs to verify commitments. A Proposer's failure to obtain such written commitments may result in a Proposal being deemed non-responsive.
- f. Proposers ARE WARNED that failure to comply with the requirements of subsections a., b., or c. above, within the times prescribed, will result in a Proposal being deemed non-responsive, unless a later time is authorized by the District.
- g. Proposers ARE WARNED that only firms certified as DBEs prior to the proposal due date can be counted toward meeting the DBE participation goal. For the Proposer's convenience, the CUCP Uniform Certification Application Form package (that replaced documents formerly designated as Schedule A), for use by each business not currently certified under the CUCP as a DBE, and a Schedule B – Information Form for Determining Joint Venture Eligibility for each DBE joint venturer, as well as a joint venture eligibility affidavit can be downloaded from the District's web site, www.bart.gov or obtained from the District's Office of Civil Rights at 1330 Broadway, Suite 1702, Oakland, CA 94612, telephone number (510) 464-6100. Businesses not meeting the definitions set forth in Section A above will not be certified as DBEs.

E. Good Faith Efforts to Meet DBE Goal. Good faith efforts are those that, given all relevant circumstances, a Proposer actively and aggressively seeking to meet the goal would make. The Proposer must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation. Only those efforts made prior to Proposal due date will be considered for evaluation of good faith efforts. Each Proposer is strongly encouraged to attend the pre-proposal meeting listed by the District in the RFP. The meeting is intended to cover the DBE program requirements for the Agreement, to inform DBEs of Subcontracting opportunities, and to provide an opportunity for Proposers to meet and/or solicit Subconsultants. Regardless of whether a Proposer attends the meeting, the Proposer assumes responsibility for being informed and complying with the DBE requirements. In determining whether good faith efforts have been made, the District will consider the quality, quantity, and intensity of the different kinds of efforts that Proposer has made.

1. Specifically, but without limitation, the District will consider, on the basis of documentation submitted by the Proposer, whether the following actions have been taken:

- a. Advertisements soliciting subconsultant proposals on this Agreement from DBEs in trade association publications, women and/or minority focus media or other applicable daily or weekly newspapers or trade journals or other media published in sufficient time to allow the DBEs to participate effectively. Such advertisements shall refer only to proposals for the District's Agreement and shall specify the categories of services for which subconsultant opportunities exist;
 - b. Solicitation of interest in this Agreement from DBEs evidenced by copies of registered or certified letters to relevant CUCP listed DBEs or to a reasonable number of certified DBEs sent in sufficient time to allow the DBEs to participate effectively;
 - c. Follow-up of initial solicitations of DBE interest in order to determine with certainty if the DBEs are interested;
 - d. Identification of portions of work to be performed by DBEs in order to increase the likelihood of meeting the goals (including, where appropriate, breaking down the work into economically feasible units to facilitate DBE participation, even where the Proposer might otherwise prefer to perform these work items with its own forces);
 - e. Providing interested DBEs with adequate information about the scope of work and requirements of the Agreement in a timely manner to assist them in responding to a solicitation;
 - f. Negotiating in good faith with interested DBEs;
 - g. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
 - h. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required;
 - i. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 - j. Effectively using the services of available women/minority community organizations, minority/women contractors groups, local, state, and Federal minority/women business assistance offices, in order to identify certified DBEs for work under the Agreement. A listing of such organizations is available from the District's Office of Civil Rights.
2. Proposer is required to provide the District records of responses, proposals and/or other communications received from DBEs for specific proposal scope including:
 - a. The names, addresses, and telephone numbers of all DBEs contacted;
 - b. A description of the information provided to DBEs regarding the scope of work for portions of the work to be subcontracted;
 - c. The reasons for rejecting any DBE proposal scope submitted to the Proposer;
 - d. A description of the investigation conducted of any DBEs rejected as unqualified;
 - e. A description of assistance provided to interested DBEs relative to obtaining scope of work, and required bonding or insurance;

- f. A description of assistance provided to DBEs to obtain necessary equipment, supplies, materials, or related assistance or services;
 - g. A description of the use made by Proposer of the services of available minority community organizations and minority contractor's groups.
3. Proposers shall include in the report submitted under subsection D.1.c. above, any other efforts made not listed above which are relevant to meeting the DBE goal.
 4. Proposer's efforts may be deemed insufficient by the District if the Proposer has failed to make any of the foregoing efforts, or has rejected DBE subconsultant proposals without adequate reason. If applicable, price alone will not be considered an adequate reason.
 5. A database containing the names and addresses of firms certified as DBEs under the CUCP is available on the District's web site, www.bart.gov.
- F. Hearing On Good Faith Efforts Determination. If it appears to the District that a Proposer has submitted all DBE documentation in compliance with subsection D.1 above, including but not limited to, good faith efforts documentation if applicable, but has neither achieved the indicated percentage of DBE participation nor made sufficient good faith efforts to meet the goal, such Proposer will be notified that its Proposal will be recommended for rejection and the reasons therefor. Within five (5) business days of such telephone and/or facsimile notification, such Proposer may request a hearing. Such hearing will be held at the convenience of the District but no later than ten (10) business days after receipt of the request and in accordance with the Office of Civil Rights Hearing Procedures, copies of which are available upon request. At such hearing, the Proposer shall bear the burden of demonstrating:
1. Achievement of the percentage goal for DBE participation as of the date of Proposal submission as documented in the Proposal, or
 2. Good faith efforts made prior to Proposal submission that, given all relevant circumstances, could reasonably have been expected to produce a level of DBE participation that met the Agreement goal.
- G. Award. Meeting the goal for DBE participation or demonstrating to the satisfaction of the District good faith efforts to do so is a condition for being eligible for award.
- H. Substitution of DBE Subcontractors. CONSULTANT will immediately notify the Project Director of a DBEs inability to perform, and shall provide reasonable documentation to substantiate such non-performance. Should substitution of any DBE, subconsultant or supplier become necessary, CONSULTANT shall make good faith efforts, as defined in Section E. above, in cooperation with BART's staff, to replace the affected DBE with another DBE. CONSULTANT shall provide completed DBE certification documents or application form for each new DBE.
- I. Change Orders. CONSULTANT shall prepare for the Project Director a statement regarding how any proposed change order may affect DBE subcontracting. CONSULTANT shall make good faith efforts, as defined in Section E. above, to include DBE participation at not less than the level of participation set forth in Section B. above in the performance of services under any change orders that may be issued under this Agreement.
- J. DBE Records. CONSULTANT shall maintain records to verify DBE participation as set forth in the Proposal and as modified in any way during the course of the Agreement. Such records shall show the name and business address of each DBE participating in the Agreement and the total dollar amount actually paid each DBE and the date of payment. A monthly report based on these records and certified to be correct by CONSULTANT shall be submitted to the Project Director with the monthly payment invoice. CONSULTANT shall include with the monthly report any other efforts made which are relevant to meeting the DBE goal.

CONSULTANT shall submit with the first monthly report copies of all DBE subcontracts and purchase orders that have been entered into or issued in connection with the Agreement and shall submit with subsequent monthly reports copies of any such additional subcontracts or purchase orders. The monthly report shall include copies of all invoices submitted by each DBE during the reporting period. The District will verify with each DBE the amount actually paid to the DBE. No invoice will be approved for payment unless the current report and all required attachments have been furnished. DBE participation will not be counted toward CONSULTANT's DBE achievement until the DBE has been paid. Upon completion of the Agreement, a summary of these records shall be prepared and certified to be correct by CONSULTANT or its authorized representative, and shall be furnished to the Office of Civil Rights.

- K. Prompt Payment. The CONSULTANT shall promptly pay any and all subcontractors. Specifically, unless otherwise approved in writing by the Project Director, CONSULTANT shall, within five (5) days after receipt of the payment by BART specified in this Agreement, but in no case more than thirty (30) calendar days from receipt of CONSULTANT's invoice whether or not payment has been made by BART, pay to each of its immediate subconsultants (or their respective assignees), for satisfactory performance of its contract, the amounts to which they are entitled, after deducting any prior payments and any amounts due and payable to CONSULTANT by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If the CONSULTANT determines the work of the subconsultant to be unsatisfactory, the CONSULTANT must immediately notify in writing the Project Director (and the Office of Civil Rights if the subconsultant is DBE) and state the reasons. Failure by CONSULTANT to comply with this requirement will be construed to be a breach of Agreement and may be subject to sanctions as specified in the Agreement.

In addition, the CONSULTANT must promptly return to a subconsultant retentions withheld, if any, within 30 days after the subconsultant's work is satisfactorily completed.

- L. Noncompliance. Failure to comply with the requirements of Sections H., I., J., and K. above, or failure to maintain the level of DBE participation proposed in the Proposal in accordance with these DBE provisions, shall be grounds for termination of the Agreement in whole or in part, or, in the discretion of the District, for withholding payments due CONSULTANT during the period of noncompliance.

ATTACHMENT A

DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION FORM

Is Proposer a DBE? ☐ YES ☐ NO

CUCP Certified? ☐ YES ☐ NO

If YES, enter Certification Date: _____

Is Proposer a joint venture with DBE partners? * ☐ YES ☐ NO

If YES, are Joint Venture Forms attached? ☐ YES ☐ NO

% of DBE participation in joint venture: _____

* If the Proposer is a joint venture, only the portion of the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work that is performed solely by the DBE's own forces can be counted toward DBE participation. If the work is not clearly delineated between the DBE and the joint venture partner, only the portion of the work equal to the DBE's percentage ownership interest in the joint venture will be counted. See Exhibit 5, subsection C.2.

EXHIBIT 6

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTIONS

EXHIBIT 6

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the District's Materials Management and Procurement Office, telephone (510) 464-6540, for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List [Telephone (510) 464-6540].
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under Paragraph 5, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the

Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

10. The prospective lower tier participant certifies, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
11. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this proposal.

Signature of CONSULTANT

Print Name and Title of Person Signing

Date

EXHIBIT 7

CERTIFICATION REGARDING LOBBYING

EXHIBIT 7

Applicable to Consultants and Subconsultants of any Tier

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of a Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Name of Firm

By: _____

Please print name of signator:

Title: _____

EXHIBIT 8

CERTIFICATION REGARDING FINANCIAL CONTRIBUTION

EXHIBIT 8

CERTIFICATION REGARDING FINANCIAL CONTRIBUTION

Certification to be executed by Proposer and each proposed first tier subcontractor whose subcontract exceeds \$100,000. Make additional copies of the Certification as necessary.

Proposer must use its best efforts to collect the Certification from each first tier subcontractor whose subcontract exceeds \$100,000 and to submit such Certifications along with its own to the District on the date proposals are due.

Proposer is advised that all Certifications must be submitted on the date proposals are due unless there is reasonable cause for delay; however, Proposer is cautioned that unless all Certifications are submitted within five (5) calendar days after the date proposals are due, the proposal may be considered non-responsive. See the instructions in the RFP for submitting Certifications after the proposal due date.

The undersigned certifies that:

1. It will not make any monetary or in-kind contribution (including loans) to any BART Director, or any candidate for Director, from the date proposals are due until the award of the agreement.
2. It understands that the term "contribution" shall have the same meaning as defined in Government Code section 82015 and implementing regulations adopted by the Fair Political Practices Commission.
3. If Proposer is awarded the agreement, the undersigned shall continue to comply with this prohibition for three months following the award of the agreement.

Name of Firm

Signature and Date

Print Name and Title

EXHIBIT 9

PROJECT CONSULTANT TEAM

PROJECT CONSULTANT TEAM

Name, Address and Phone Nos. of All Firms Participating on the Project (Including Prime) and Subcontractors	Check if DBE	Nature of Participation	% of Project Work	Anticipated Dollar Value of Participation
TOTALS				

Exhibit 9
Project Consultant Team
Page 2 of 2

EXHIBIT 12

RATE SCHEDULE FORM

Proposer shall include Schedule of Billing Rates for various classifications of personnel to be assigned for each of the three (3) years of the Agreement.

A. First Year

B. Second Year

C. Third Year

THE DISTRICT RESERVES, IN ITS SOLE DISCRETION, THE RIGHT TO WAIVE MINOR IRREGULARITIES IN PROPOSALS RECEIVED AND TO REJECT ANY OR ALL PROPOSALS.

Print Name of Firm

By: _____
Signature of Authorized Representative

Date

Print Name & Title

Street Address

City, State, Zip

Telephone